IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

i4i LIMITED PARTNERSHIP	*	Civil Docket No.
	*	6:07-CV-113 (LED)
VS.	*	Tyler, Texas
	*	
	*	May 11, 2009
MICROSOFT CORPORATION	*	1:30 P.M.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LEONARD E. DAVIS
UNITED STATES DISTRICT JUDGE
AND A JURY

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P R O C E E D I N G S

(Jury in.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

All right. Ladies and Gentlemen of the Jury, I hope you had a good lunch and back ready to get the case started.

What we're going to do first is have the opening statements by both sides. That will take about 45 minutes each, which is the time that's been allotted. And then we'll take a short break probably around 3:00 o'clock, and then we will come back and start the evidence.

So the Court will recognize Plaintiff for purposes of opening statement.

MR. CAWLEY: Thank you, Your Honor.

THE COURT: Mr. Cawley.

MR. CAWLEY: Every lawsuit is a story. It may be a little hard to believe that now when you've spent this morning probably hearing a lot more complications about patent law than you ever dreamed that you would when you came to Court. But I think you'll find that this lawsuit, like all others, is basically a story about people.

This lawsuit is a story about two men who

invented a way to help people use the information in computer documents. Probably none of us in this courtroom had ever heard of this invention, except the inventors themselves and the people they work with.

We don't know about it, and yet even though this invention is invisible to most of us, it's affected us in ways that we don't even know.

Businesses that we may work for or somehow do business with are more efficient because of the invention.

Because of this invention, drug companies, pharmaceutical companies are better able to fulfill their obligations of filing with the government and reporting things, like side effects and the effectiveness of drugs.

We're even all a little bit safer because of this invention, because it's helped law enforcement agencies more efficiently share information.

This afternoon I'd like to tell you a bit more about that invention, what it is and how it works. But, first, I'd like to introduce you to the people who made it possible.

This is Stephen Owens (indicates), and back here a long way away is Mr. Michel Vulpe. These are the two inventors of this invention.

Mr. Vulpe was working on the problem when he talked to his next door neighbor many years ago, and his next door neighbor said, you know, my kid brother is a computer whiz. You really ought to talk to him. That's how these two men met, and eventually, working together, came up with the invention that has brought us all to the courtroom today.

Now, to explain a little background of how the invention works, I want to now take about 10 minutes to talk to you about the history of documents.

Now, documents have been around for thousands of years, of course. And this is what we usually think of (indicates) when we think about a document.

When all of us were in the first grade, we first learned to make documents like this. But what we'll learn -- we learned, I'll suggest to you, really comprised two different parts. We learned the content of documents; how to put things down in words. But we also learned how to make the document look, how to leave a margin down one side, how to skip a line after the title.

The name for how a document looks as opposed to its content is called formatting. For thousands of years, of course, all documents were

handwritten like that one. But when the printing press came along, there were some changes, because in printing presses, it's a person called a typesetter that actually takes the wooden type, in the early days, or the lead type in later days, and lays it into a tray to print the sheet or the pamphlet or the book that becomes the document.

There were also people, though, whose job it was to tell the typesetter how the document should look, and those people were called markup men. Now, I don't know if any of them were women, but the fact of the matter is what they were called was markup men. And the markup men and the typesetters developed between themselves a specialized language that the markup men would use to mark up the document to tell the typesetter, any typesetter, here's how the document should be formatted; here's how it should look. And this special set of symbols and numbers and drawings came to be called markup language.

Now we come to the era of the next big event, the computer. The computer created a revolution in documents. First of all, before the computer, almost all documents were on paper. After computers, though, some computer documents could be printed on the paper, but the vast majority of computer documents are never

printed. They're created on a computer. They're read on a computer. They're stored on a computer and may be sent to computers all around the world, but they're still known as documents.

Here, for example, is a simple example of a computer document created on a computer and read on a computer screen (indicates).

The availability of computers to people, to everyday people in businesses beginning in the 1980s created an explosion in the number of documents available, and that, in turn, created two problems.

First, there were too many documents for people to read; and, second, computers back in that time, the 1980s, couldn't read documents like people do.

Now, let me take just a minute to explain those two problems. Let's suppose that this very simple document that you see is something that was created in the course of some business and that that business creates those documents all the time. And over the years, they've accumulated enough of those documents to fill this courtroom, hundreds of thousands or millions of documents like this.

Well, if my boss comes into the office one day and says, you know, I need to find all the documents relating to a certain date, how am I going to

find those documents? If I'm lucky, maybe we've organized the documents in chronological order, so all I'd have to go is look for the right date. Well, that solves that problem.

But what if instead my boss comes in and says, you know, forget the date. What we're really interested in is everything that happened in Tyler.

Well, now the dates don't help me. How am I going to find everything that happened in Tyler? The short answer is I'm going to have to read the whole room full of documents. And for a business with literally millions of documents, this was not a possibility.

But you may well be asking yourself, well, what about a computer? I mean, those documents are on computer. Aren't computers really good at searching for things quickly? Why couldn't you just do that?

Well, yes, computers are very good at searching for things quickly. But in the 1980s, they weren't good at understanding what they had found like a human could.

So, for example, if this was one of a million documents and we asked the computer to search for all the documents in which 903 occurs, within a few

seconds at least, a modern computer could go through those million documents and give you, let's say, 10,000 documents in which 903 appeared.

But wait a minute. Does that mean area code 903, or does it mean 9:03 in the morning, or does it mean $903?

The computer, although it has the ability to search for all the 903s, it doesn't know what it's reading. And if you want to tell it to go out and just look for area codes, couldn't do that.

Well, people in the early days of computing saw that this was going to be a big problem, and some people came up with a solution what to do about it. And what it was, was a markup language, just like in the old days, except instead of using the markup language just to give formatting about how a document should look, this kind of markup language would be used to tell the computer where there was a certain kind of information.

Now, how did it do that? First of all, what was it called?

There were a couple of names for these languages, and you will hear these throughout the trial. I don't think it's important that you remember the titles and what the initials stand for, but you're going

to hear about something called SGML, which stands for standard generalized markup language.

There was a certain kind of SGML, a subset of SGML, if you will, called XML, which stands for extensible markup language.

Now, the important thing to remember from this -- as I said, it's not necessarily to try and memorize those names -- but to remember when you see these initials that end in the M-L, that stands for markup language. And these are markup languages that instead of telling people how documents should look would tell computers what the information of the document is and where it is.

Now, how would it do that?

Well, here is an example of that simple document that you saw before, but this time, it's in the XML markup language. And you see, it looks quite a bit different than what we're used to. But if you look at it carefully, you'll see on the top line here, there's the My Document, the title that we had before, but now it's surrounded by these two things that you will learn during the trial are called tags. That's the name that they're given in XML.

And those tags signal to the computer that what is in between those two tags is the title of

the document. Take the area code example we discussed earlier. Here's the 903 that we saw before.

But now that 903 is surrounded by these two tags that tell the computer that this isn't a price tag; it's not a time of day; it's area code 903. The availability to do this had the potential to revolutionize the way that people use computer documents because now, in addition to being able to use computers to churn out stored documents, people could actually use SGML and XML to search for the information contained in those documents, to let a computer read a document for information in much the same way as a human being would read the document, if they had time.

Mr. Owens and Mr. Vulpe, who were working in this field, the inventors, recognized that this was going to be a huge leap forward in data management of computer technology. Governments would be able to share information among agencies. And it wasn't only information like that that could be used.

Any computer application that could understand this SGML language, such as something that would make computer drawings or even an application that would operate a robot, any of those things could be paired with a document using the SGML language. But at the same time, they saw the promise of these markup

languages. Mr. Owens and Mr. Vulpe saw the problem.

Now, from the benefit of hindsight, it may not seem like a huge problem, but at the time, before SGML and XML had been widely adopted, it was a huge problem, and there were actually two of them.

The first is in front of you. This document, frankly, looks pretty much like a mess. It looks very different than the kind of documents you're used to seeing, if you create documents on a computer, this is the kind of documents that you create. And it looks very different from the kind of documents that businesses at that time and today typically create. And although there might be big advantages to sticking these tags in the document for some purposes, businesses were very reluctant to have to switch over to a system that made all their letters, all their memos, all their internal documents look like this.

The second related problem was that you had to have a special piece of computer software to create the tags and the content in this document. That meant that you couldn't use readily available word processors, like, for example, Microsoft Word, to create these documents.

Now, some of you indicated that you use Microsoft Word. If that's true, then you've spent at

least hours, and in some cases, many hours learning how to use that word processor to create documents in the way you want to.

If you are a word-processing professional, a secretary, or someone in data entry, you might have spent hundreds of hours learning how to use Microsoft Word.

If you are a business who employs a lot of those word-processing professionals, you have an enormous investment in their knowledge of how to use Microsoft Word. And businesses were simply flat-out not willing to abandon the ability to create documents using their already existing word processors in order to explore the benefits of using XML.

Stephen and Michel realized if XML was ever going to get off the ground, if businesses were ever going to capture its power, somehow a way was going to have to be found to let people create XML documents using an ordinary word processor.

They thought about the problem, and one day they came up with a solution. And this is a drawing of it (indicates).

Their idea was to take the content of the document and instead of burying these tags in it, to separate into a separate part of the computer memory the

map to the tags so that someone who wanted to create an XML document could use their ordinary word processor, for example, Microsoft Word, create the document.

It would look just like an ordinary document, but software would track where these tags actually appear in the document. Every time the document's changed, the software would keep track of this.

This separation of the map tags and the mapped content into two different portions of the computer's memory solved the problem of the adoption of XML.

Now, it's very important as the case proceeds here that we be crystal clear about what Michel and Stephen invented and what they didn't. Of course, they didn't invent computers; they didn't invent SGML; they didn't invent XML.

What they invented was a way to bring XML to reality by enabling businesses to use an ordinary word processor, like Microsoft Word, in creating XML documents.

Now, I'd like to show you some things that happened at certain times. In about five minutes, you'll see why it's kind of important that we keep track of these dates.

But let's begin with 1994. It was in 1994 that Mr. Vulpe and Mr. Owens filed their United States patent application. And as you saw in the video downstairs this morning, the Patent Office considered that application. There was some back and forth.

In fact, they looked at it for almost four years. And in 1998, the U.S. Patent Office issued Mr. Owens and Mr. Vulpe a United States patent, which we have in the courtroom with us right now.

Mr. Owens, if you would show that for the jury.

MR. OWENS: (Complies.)

MR. CAWLEY: This is the original copy of the United States patent issued to them that usually hangs framed on the walls of i4i's offices.

Did I push a button up here by accident?

Should be left consultant computer.

Right? There we go.

At the time that Mr. Owens and Mr. Vulpe followed this invention, they were working for a company called Infrastructures for Information that you heard referred to in this lawsuit as i4i. i4i is a Canadian company. At it's largest, it's been about 115 employees. Today, it has about 20.

You will hear throughout the course of

this lawsuit that because it's small and had a brand new idea, i4i has always struggled financially to compete in the marketplace. To help them do that, in 1998, they hired this man, Bill Cox.

Mr. Cox at that time had 35 years of experience in the software industry, and he had already retired. Though when Mr. Vulpe showed him this invention and showed him what it could do, you'll hear Mr. Cox testify that he was blown away by the possibilities and insisted on coming out of retirement so he could help bring this product to the marketplace.

i4i produced a product using the invention that's called S4/Text. That's the name of the product that i4i sold to the marketplace. And it allowed people to use Microsoft Word as an editor to prepare XML documents. That was released into the marketplace in 1999.

And then a pretty incredible thing happened. You remember the discussion about the Patent Office's consideration of the invention from 1994 to 1998. You remember again you saw that on the video downstairs and the young woman whose desk was piled up with documents and so forth.

After S4/Text was released to the marketplace, the United States Patent Office came to i4i

and said we want your product; we want to become a customer for S4/Text; we need the power of your invention.

This is an article from a Canadian newspaper announcing that the United States Patent Office itself had become a customer for i4i's product. And that happened late in the year 2000.

Since that time, i4i has largely continued to specialize in delivering its products to pharmaceutical companies. These are an example of some of the companies that have been its customers; companies like Amgen, Bayer, Baxter, Bausch & Lomb, and other major pharmaceutical companies that you may have heard about.

Now, at this point, I need to pause a moment, and I need to talk to you about the Defendant in this lawsuit, Microsoft. Probably all of you know Microsoft. It's one of the biggest companies in the world. It's by far the biggest software company in the world. The last time I saw a count they have about 80,000 employees all around the world.

One of Microsoft's most popular products is called Microsoft Word, a word processor that helps people in businesses create documents on a computer. And Microsoft has had a lot of versions of Microsoft

Word all the way back into the 1980s.

And these little icons down below the line of the dates represent different versions of Microsoft Word that Microsoft has released to the marketplace. Basically, what they do is they'll come out with an improvement every year and sometimes every two years, tell people why their product is better than the old version, and encourage people to upgrade to the new version.

But throughout this time that you see here, from 1992 to 2001, every one of these versions of the Microsoft Word word processor had something in common: None of them worked with XML.

And as you are about to see, by late in this timeframe, long after the application for i4i's invention, long after the patent issued, Microsoft began to realize there's an XML revolution coming and we're not on the bus. We don't have a product that people can use as an XML editor.

Let me show you some actual internal Microsoft documents about this. Here's one (indicates). This was written by a man named Jean Paoli, an employee of Microsoft.

Now, let me caution you that in about the next 10 minutes, I'm going to be throwing a lot of names

at you, because there are a lot of people who work at Microsoft, and it's not really important that you remember those names. I'll try and identify clearly whenever I throw one at you that it's a Microsoft employee that we're talking about.

But this one's name is Jean Paoli. He was very familiar with XML and what it could do. And early in the year 2000, he wrote this memo to other people within Microsoft. And this section starts off: The bad news for us. We are in deep trouble, to paraphrase. We are not building a single client. And there the word, client, refers to a software product.

We're not building a single client who can consume XML in its generality. Please do not be fooled by what we at Microsoft are building today. There is absolutely no client or product in Microsoft which can consume, manipulate, modify, author, present the data in a user-friendly way to the user -- sorry; I'll get it in a minute -- and let her take advantage of generic XML schemas.

So Mr. Paoli here is sounding the alarm within Microsoft. We don't have a product, and we don't even have a product on the drawing board that can do XML.

And the timing here is important, because Mr. Paoli wrote this memorandum to Microsoft, that they're in deep trouble, early in 2000, many years after i4i conceived of the invention that solves this problem and a year and a half after the patent had issued.

But it didn't stop with Mr. Paoli. During the course of the trial, you'll see quite a bit of communication back and forth within Microsoft about their desperate need for an XML editor.

But, significantly, it went all the way to the top. This is an e-mail from Mr. Bill Gates, who I'm sure most of you have heard of, the Chairman and founder of Microsoft. And in March of 2001, he wrote in his e-mail: Now the market wants a great XML editor. It's hard to say we are the leader of the XML revolution if we don't have an editor.

And when did he write this?

Once again, long after i4i had already patented an invention that would solve this problem. But then, sure enough, Mr. Gates, in a way, proved that he didn't get to where he is by not having pretty good sense and pretty good foresight, because almost on the same day that he wrote that e-mail about needing an XML editor, another employee of Microsoft named Chris Pratley, who works with government agencies, sent out an

alarm within Microsoft.

He said, Here's a great example of a huge customer interest in XML. The Department of Defense has been searching for ways to create knowledge and then find it once it has been created. It's a significant portion of the revenue within North America in the federal government, and I worry that they can replace our cash cow.

We want to sell Office XP, and we want to remain the best production application in the government. The government is pretty hard over on the XML document requirements, so how can we remain number one?

They, the government, are also willing to live with all sorts of pain to get content out of Word. Well, now Microsoft had a problem. It's not just theoretical anymore. One of their biggest customers, the federal government, is demanding of them, how are you going to let us create XML documents using Microsoft Word?

So what did Microsoft do?

Well, I will suggest to you, Ladies and Gentlemen, the second incredible thing in this case happened. The giant, Microsoft, turned to i4i for help. There's going to be a meeting in Washington, D.C. The

government insisted on meeting with Microsoft to be told how Microsoft was going to solve this problem.

Microsoft invited i4i in the form of these two employees, John Tulley and Keith Thomas, who are both in the courtroom today, and who you'll hear from later on in the trial.

Mr. Tulley and Thomas sat in on the meeting with Microsoft and told them how the invention in their product worked. They gave them handouts in a presentation. In this presentation, they told Microsoft that S4/Text delivers the benefits of valid XML to Word users and that it provides the familiar Word environment. You can make XML documents and not have to use a new Word processor.

Significantly, they also gave a copy of something called i4i At-A-Glance to Microsoft. And in that document, Microsoft was informed that the technology in S4/Text was patented by this U.S. patent, the number which you probably recognize. It's the patent in this lawsuit.

The next day, there was a big meeting between Microsoft and the government. They asked i4i to attend that meeting with them. In that meeting, when the government representative insisted, how are you going to provide XML capability in your Microsoft Word

product, Microsoft responded: Well, when we have a special need for a customer like you, we often turn to people like this, pointing to the representatives for i4i.

After that meeting, the man who was in charge of it, another Microsoft employee this time named Mark Belk, sent a message to some of the i4i people who had been involved in the meeting and said: You should see this as an opportunity, since you have a capability that we, Microsoft, only have on the drawing board. Significantly, Mr. Belk also communicated to other people within Microsoft about how the meeting between Microsoft and the government and i4i had gone. And here's what he said: The only way that we could do this was with a third-party plug-in, and i4i came through for us.

Well, that was pretty high praise from Mr. Belk. And indeed, it indicated a relationship between i4i and Microsoft that seemed to be good for everybody.

You see here a document from April of 2001 in which Microsoft describes i4i as being a Microsoft partner.

And then pretty well the icing on the cake. In June, Mr. Belk sent this e-mail to Mr. Thomas

and other people within i4i, that Microsoft was sending an invitation to i4i to attend something called the Office Advisory Council. And you'll hear that this is a big deal.

A meeting of Microsoft and some third-parties that work with Microsoft to discuss the future of products. And you'll hear that when i4i got this invitation to the Office Advisory Council, they thought to themselves, looks like our years of struggle have finally paid off. We have arrived.

But then something strange happened. The next e-mail that i4i got from Microsoft was this one. It's from a man named Andy Zukerberg, who, of course, works at Microsoft. And Mr. Zukerberg told i4i, well, you know, that invitation to the big meeting, that was due to a miscommunication on our end. That's not really available.

For some reason, i4i got uninvited to the party. Well, Microsoft knew why that was, and they put it in a secret document that Microsoft has kept secret until it's going to be seen publicly for the first time today.

Mr. Zukerberg told others at Microsoft on the same day he uninvited the i4i: My main concern with i4i is that if we, Microsoft, do the work properly,

there won't be a need for their product.

In 2003, this sequence of e-mails occurred. The first that you see here is actually an e-mail from another employee of i4i, Mr. Baksh, who sent this e-mail to Microsoft because he hadn't heard anything in a long time about their so-called cooperation.

He reminds them about i4i's Tagless Editor and what it can do, and he also reminds them that this technology is protected by the U.S. patent. You will see that this e-mail arrives at Microsoft and goes up the chain of command until it finally arrives on the desk of a man named Martin Sawicki.

So Martin Sawicki, who works at Microsoft and works on XML, eventually receives this document, and he responds back down to the Microsoft people who sent it to him by saying: Thanks, we saw this tool some time ago and met its creators. Word 11 will make it obsolete. It looks great for XP, though.

Consider what this e-mail means.

First of all, Mr. Sawicki at Microsoft says that for XP, which was the old Microsoft Word product that didn't do XML -- for XP, the i4i invention works great, but don't worry about it because our new product, Word 11, will make it obsolete.

Meanwhile, what's going on at i4i?

Not more than a month before this e-mail was written within Microsoft, Mr. Vulpe at i4i sends this e-mail to Jean Paoli.

Remember him? He works at Microsoft on XML.

Basically, wanting to know, so what's going on. And he says: Jean, congratulations on your progress with Office 11 and XDocs. Would it be possible to discuss that and where i4i is. Our S4/Text add-in to Word is getting attention. We have over 50,000 seats out there.

THE COURT: Let me just advise, you probably have about 10 minutes.

MR. CAWLEY: Thank you, Your Honor.

So i4i still hoped that the relationship was intact. They didn't know Microsoft's internal plans. And, indeed, Microsoft carried out exactly the plans that you heard. They took the invention and moved it in to Microsoft Word.

Now, there's a witness here today -- if you'll stand up -- this is Mr. Tom Rhyne. You heard about him briefly earlier today. I can't tell you that the full explanation of how Microsoft infringes the patent is going to be simple, but I can tell you that

when Dr. Rhyne explains it, you will understand it. We brought him here, because, as you heard, he has decades of experience as a professor at Texas A&M and as a professor at the University in Texas -- of Texas. His stock and trade is teaching and explaining complicated matters like this.

And he will explain to you in maybe more detail than we all want to hear, but in the amount of detail we need to hear, how Microsoft 2003 and 2007 infringes the patent.

But the high-level story is that it infringes the patent because it does this (indicates). Microsoft created within its Word product this portion, the metacode map that maps the tags to the content of a document that's located in a separate datastructure in a different part of the computer memory.

You'll also hear that since the time that it started using i4i's invention, that Microsoft has made more than $14 billion in profit from the sale of products that can be used to infringe i4i's patent.

Now, Microsoft lawyers can be expected to argue to you, oh, but there's lots of features in Microsoft Word. This XML thing, that's just one of the many kinds of things that we put into Word and it's really only -- it's really only a small and

insignificant part of the value.

As you hear that argument, consider, though, the evidence in the case. This is a document created by Microsoft in connection with their own launch of Word 2003. And at that time, before they got into this lawsuit, they said: Foremost among the improvements in Word 2003 is the deep support for customer-defined XML, not a small feature of Microsoft Word but foremost among the improvements.

Well, sometime after Microsoft made its decision and brought Word 2003 into the marketplace, i4i began to suspect that something was amiss. They even began to suspect that Microsoft might be infringing their patent and using their invention.

Unfortunately, it wasn't easy to figure out. When you go and buy a copy of Microsoft Word, you don't actually get the code, what's called the source code, to show you how it works. So i4i hired some experts to help them get to the bottom of that, and eventually their worst fears were confirmed. And they learned that Microsoft was infringing their patent.

i4i then had to make a decision what to do about it, and their decision eventually was to bring this lawsuit to defend their patent rights. To do that, they had to reorganize the company. They took i4i Inc.,

i4i Incorporated, the existing corporation, and they formed a new company called i4i Limited Partnership. All the partners in the corporation became -- sorry -- all of the shareholders in the corporation became partners in the new limited partnership. Investors from whom they raised additional money also became partners in the limited partnership, and they moved the ownership of the patent from i4i corporation into i4i limited partnership.

That's the reason that Judge Davis explained to you today that there are really two i4i entities in this lawsuit: The corporation and the limited partnership.

i4i has brought this case so they can ask you to award them fair value for the use of their invention.

Now, what would fair value be for something like this?

Well, they also hired a man by the name of Mike Wagner. He's right here (indicates).

Mr. Wagner has spent his entire career of 30 years plus in the business of trying to determine the amount of a fair and reasonable royalty for the use of a patent. He's done extensive work and analysis in this case, and you'll hear from him, his conclusion, that a

reasonable royalty to i4i for Microsoft's use of its invention is about $200 million.

Now, $200 million is a lot of money in any context and by anybody's perspective. But to keep that number truly in perspective, let me remind you that $200 million represents this tiny fraction of Microsoft's profits.

And, remember, that's not their revenues; just the money they took in the door. That's Microsoft's profits from all of the units they have sold that are capable of being used to infringe this patent.

So that, Ladies and Gentlemen, is the story we believe that you'll hear during this trial. You'll hear a story about the two men, Mr. Owens and Mr. Vulpe, with a new idea.

You'll hear a story about the other employees of i4i who worked hard to try and make it a success, who worked hard to try and work in partnership with Microsoft.

And you'll hear a story about the people at Microsoft who decide it was better for them to take that invention without paying fair value for it.

And at the end of the day, when we finish the trial, I'll stand here; I will review the testimony that you've heard; and I will ask you to award i4i fair

value for Microsoft's use of this invention.

THE COURT: Thank you, Mr. Cawley.

All right. Counsel for Defendant.

MR. POWERS: Thank you, Your Honor.

Your Honor, can we bring the lights back down, if we could?

THE COURT: Sure.

MR. POWERS: Well, good afternoon. Mr. Cawley and I agree that this case would be story. We just don't agree what the story is. I actually do agree with about 80 percent of what he said, but where we disagree is some other facts that I would like to bring to your attention.

At the end of trial, though, after you've heard all the evidence -- and as Judge Davis said, it really is important that you wait till the end, because we have to go second. Please wait until you've heard all of the evidence. At the end of all of that evidence, we believe that the evidence will tell a very different story.

Now, one of the things you're going to have to decide in this case is something we talked about a little bit during voir dire. There are all sorts of good reasons to enforce a patent. There are some not so good reasons to enforce a patent.

We think that what the evidence will show here is that the enforcement of this patent is brought wrongly. But that will be for you to decide.

The issue here begins with the parties. And I think of cases -- and there's a lot of different ways to think about them -- as being either engineer cases or banker cases.

Engineer cases are often ones that are brought to protect a patent, to protect a successful patent from being copied. That's not what this case is about in our view based on the evidence.

Other cases, the banker cases, are ones where you didn't have a very successful product, and the bankers decide to try to get their money out another way. We think the evidence will show that is what this case is about.

i4i, Inc., was founded by Mr. Vulpe. He founded it as a software company trying to sell software products, and it was not successful.

There's no shame in that. A lot of companies don't succeed despite having good people who try hard and work very hard. There's no shame in that at all.

The shame, from our perspective, comes from what happens next. A lot of great companies have

been formed when people who failed the first time try it again.

The shame could be instead of -- trying again to make a product that people will buy and sell instead of suing people for making products that people really want. And we think that's what happened in this case.

i4i, Inc., was founded by Mr. Vulpe. He originally ran it as the President. Starting around 2002, he was no longer the President, and the bankers, a group called McLean Watson, who owned most of i4i at that point, took over the company, and we'll show you what impact that has on the facts of this case.

The second part is interesting. The second part is i4i, LP, which you heard a little bit about from Mr. Cawley. That was actually the party that sued in this case originally back in 2007.

It wasn't i4i, Inc., the company that was actually making the product; it's this other company just owned by the bankers. They sued and only a year later did they add i4i, Inc., Mr. Vulpe's company. Microsoft, of course, we all know. The products that are accused here are Word 2003 and 2007. But Word has been being produced many, many years before that, and that's important in this case for reasons we'll talk

about in a minute.

Let's talk about i4i a bit as a company. It's based in Toronto. An interesting fact is that it joined at the very beginning of this company to Microsoft Developers Network. And that's a network that Microsoft sets up for companies that want to sell products that work with our products.

And the interesting fact about that, a member of the Microsoft Developers Network gets advance copies of our software. They don't have to go buy it off the shelf. They actually get advance copies that they can work from so they can design something that works with our products.

And that's exactly what i4i, Inc., did. i4i, Inc., got an advance copy so that they could do so. And Mr. Vulpe, when he comes to testify, will tell you that, in fact, they followed Microsoft's products very, very closely.

They would go to conferences that Microsoft would offer to the sponsor and say, tell us what you're doing so that we can help build products that work with yours. So they knew exactly what we were doing because they are a member of the club. They signed up.

The last point, and this is important,

is, before the accused product was released -- you heard Mr. Cawley say that we effectively did them some harm. Before the product they're accusing was released, they had already lost over $25 million, and you'll see that their company was effectively out of money.

Couldn't have been caused by a product they're now complaining about because it happened before then. But the question that you'll have to answer is, why was that? Was it because the product couldn't satisfy a need? Were there problems with the product? That's where there will be some evidence on that issue. i4i Limited Partnership -- that's the company that originally brought suit that doesn't have any technology in it, just has the patent -- its sole purpose, sole purpose is to bring this lawsuit.

It was brought into existence by a bunch of legal documents six months before the lawsuit was filed. Its only asset is the patent they're suing on. So that's all it is. It was just designed to do this lawsuit right here. And they sued us with no notice, no discussion, no nothing.

Microsoft, you've all heard about, thousands and thousands of engineers. That's important because Microsoft makes its own technology. We either buy it and pay good money for it, or we do it ourselves

using our own technology.

In this case, we did it ourselves using our own technology, and we think that's what the evidence will show you.

The interesting thing about Microsoft is, although it has thousands of employees now, it started with four guys, just like the two guys that were talked about here today; four guys out of college, one of whom didn't even graduate.

They built a successful company by building products people wanted, products that worked, and that makes them a target. That puts a big target on their back for people who want to file lawsuits that shouldn't be filing them. We think the evidence will show this lawsuit is one of those.

Mr. Cawley showed you a timeline. I'd like to show you another. Because we think these facts are very important in your decision, in helping you to decide what type of case this is and really whether Microsoft infringes.

The first important fact, in late 2002 -- this is before Word 2003 comes out. Now, because i4i is a member of our developer network, they get an advance copy of our software so they can work with it.

And you will hear admissions from i4i

people, particularly Mr. Vulpe, that they got it, they downloaded it, and they studied it.

So when Mr. Cawley says they had no reason to believe that Microsoft was infringing, the facts won't support that. Because they knew, when they studied the software in 2002, that it did exactly what they're complaining about now.

Here's a copy of the download, and you'll see over here a little i4i and their own number. That means this is a document that came from i4i's files. They downloaded it from our developer website and studied the software and studied how it worked and learned how it worked.

So you would think that the next thing they would do, after they had studied our software, if they thought it infringed their patent, is they would call us and say, you're infringing our patent. Stop it. What happens next? Very quickly after they studied it, Mr. Vulpe, instead of challenging us for infringement or saying, you're doing something wrong, congratulates us. Here's the e-mail. December 5, 2002. He sent it to the man who's responsible for this part of the technology, or at least part of it, and tells him -- encourages him, said this is a good thing.

Does he accuse us of infringement in this

e-mail? No.

Mr. Vulpe will admit that at the time he wrote this e-mail, he already studied the software and knew how it worked and knew that it did the things they are now saying are wrong. He didn't say any of that. We think it's because it wasn't wrong, and he knew it. After this time, December of 2002, did anyone ever from i4i say anything to Microsoft that they thought Microsoft was doing anything wrong? No. Never, ever a hint that there was anything that Microsoft was doing was wrong, even though they had an advanced copy of our code and studied it very, very closely.

But it's not just to us that Mr. Vulpe was saying there's no problem. Internally, internal memos, does he say that this product, after they studied it, infringes our patent? Does he say it causes a problem for us? Does he say it's going to hurt us? No. He says it creates an opportunity.

This is June 5 of 2003, about six months after he had analyzed the software carefully and a few months before it was even released.

So even internally, he's saying Microsoft's entry into the marketplace creates more opportunities, opens doors and opportunities. They were positive about it, at least Mr. Vulpe was.

So Mr. Vulpe knew this patent for sure. He knew our program for sure. He was studying it closely. He saw no problem with it in 2002 and 2003 We released the product toward the end of 2003. We hear nothing. The lawsuit's filed about three and a half years later in March of 2007.

So one of the questions you're going to have to ask and answer is what changed. Between the time that he's saying, this is great, congratulations, to the time that he's saying it's horrible, infringing our rights, what changed?

Well, we think the clue is going to be in the management change inside i4i and i4i LP. What happened is the bankers took over.

The man in the middle, Mr. Angus, became President. He's from McLean Watson, the banker that owned most of i4i, Inc., at that point. The man on the left, Mr. Owen, Chairman of the Board; the man on the right, Mr. Stewart, became Chief Financial Officer. All the top positions in the company were taken over by the bankers.

The two men at the bottom are from a company called Northwater, specifically called the Northwater Patent Fund. What they do is they invest in litigation, and you'll see that later as well.

So what changed? When they took over, the bankers declared a financial crisis inside i4i, Inc. Here's an internal memo to the Board of Directors of i4i from Mr. Angus. Remember, he's from McLean Watson, the new President. He says, it's a financial crisis; we're going to run out of cash.

Now, why was that? Was that something caused by Microsoft Word? No. It happened before Word was even introduced.

As of April of 2003, six months before we introduced the product they're complaining about, they had lost already by that time a total of $25.5 million. That's the financial crisis that Mr. Angus is referring to.

So they had to do some options. They had to look at what they were going to do to solve that financial crisis that the banker was talking about to the board.

Well, they quickly seize upon one option. We can sue Microsoft, in his words, to increase value, whatever that means. This is Mr. Owen, Chairman of the Board, again from McLean Watson, the lead banker owning i4i.

He says, well, what are we going to do? Increase value or achieve liquidity. That's banker-ese

for how do we get our money out of this company?

Well, they sue Microsoft. They've got a lot of money. They're successful.

Mr. Owen keeps it up. February of 2005 sends a memo to Mr. Stewart. Remember, he's the Chief Financial Officer now, both from McLean Watson. He says, well, can we sell the litigation to someone who hates Microsoft? Maybe that will get us some money. So what's really changed here is not the patent. The patent didn't change in this time period. Word 2003 didn't change. What changed is the people inside the company who were thinking about what i4i should do. Mr. Vulpe didn't see a problem with infringement. Saw it created opportunities. The banker saw a different kind of opportunity. They saw an opportunity to get some money out of the company and get their money back.

So what happened? After saying that they'd sue Microsoft or sell it to somebody that hates Microsoft, they found somebody. They found that Northwater Patent Fund, investor in patent litigation.

Here's the agreement by which they sold the patent to them. So i4i, Inc., Mr. Vulpe's company, the one that's actually making software, doesn't have the patent anymore. They sold it to this LP that's owned by bankers whose sole job is to sue us.

The very same day, September 22, i4i, LP, was formed, same group of documents, and six months later, the lawsuit happened.

That, we think, is the story of why we're here. Not because Mr. Vulpe felt aggrieved by patent infringement; we're here because the bankers decided to achieve liquidity, as they put it. That's not what we think is the right way to be doing a lawsuit. There is the limited partnership in September of 2006.

Now, what's this case about? We're all here. Even bankers can bring meritorious lawsuits. We have to look at the merits of the lawsuit carefully.

These are the two issues that we believe you're going to have to address:

1. Does Microsoft Word work the same way as the Vulpe patent?

We think the answer to that is no. It works in a different way, because it uses Microsoft technology that we've been building on for years.

2. Did the Patent Office have all the right information?

The answer to that would be no, because the information we're showing you, the Patent Office didn't have.

Why is Word different?

The first reason Word is different is because it's building on 12 prior generations of Word. Microsoft has been making Word since the early '80s, and that has created a body of technology, which we're going to build on.

So when Microsoft makes Word 2003 or Word 2007, it doesn't just change how it's doing and adopt some other company's way of doing things; it builds on what we do. And that difference will be important.

One of the things that I think is important in any patent case is to make sure that we look closely at the evidence. It's easy enough to throw up a document on a screen and see a word that says map or something like that, or Bill Gates saying we need an editor. But we believe the evidence requires a closer look, and I thought this would be an interesting way to make that point.

This is a satellite photo taken of two different things. It looks pretty similar from many miles up in the sky. You zoom in, it still looks awfully similar. But you zoom in a little more, and it turns out the one on the right has all along been the Great Wall of China. The one on the left side all along has been the Sabine River. Apparently, that fork is a little southeast of this courthouse.

That is just making the point that you can't just look at the surface of the evidence in this case. What we ask is that you look closer. And when you look closer, we believe you're going to see that Microsoft Word is different.

So, for example, one of the documents that I put up, I'll show you this exhibit that has the word XML mapping. And you'll say the patent has the word map; this has XML mapping; that's all you need know.

We're going to ask you to look closer, because when you look at exactly how the Court construes mapping, we think we don't infringe. And I'll show you that in detail in a few minutes.

Mr. Gates' e-mail, which Mr. Cawley showed you in opening statement, talking about XML editors, well, that's interesting, because I think the evidence will show that that's not what this case is about.

What this case is about, these are three requirements for i4i to meet its burden of proof on infringement. And they have to meet all three, every single one of them. If only one of them isn't present, i4i has not met its burden. And we think it can't meet any of these.

The first is that they have to store a metacode map in what's called a datastructure. And here I've shown you -- and I think it's important -- again, we're asking you to look closely at the evidence.

You saw Mr. Cawley put up a board that showed some -- a couple of boxes here and there. We're showing you the actual claim, and we're showing you Judge Davis' actual construction that's in your book of that claim.

A metacode map is a datastructure. So what does that mean, and why is it required?

Well, in order to understand that, you have to understand what's a metacode and what's the content.

Here's an example from the patent itself. The patent shows this formatted document, a very simple document. The title is The Secret Life of Data. The first paragraph is data that's hostile, the end. This is actually in the patent that's at issue here.

But what the patent says is -- and this is similar to what Mr. Cawley showed you -- if you have embedded codes in that, that would tell you which part is the chapter, which part is the title, where the paragraph is, et cetera, and at the bottom, mixes together the content with those metacodes.

And what the patent teaches is exactly what Mr. Cawley said. You separate that mapped content, the actual words, from the metacodes. And all these figures are straight out of the patent.

So you have the metacode map on the right. That's the datastructure the Court's construction is referring to.

So the question is, does Microsoft Word 2003 have a datastructure as the Court's claim construction requires?

You see the metacodes; you see the positions and the addresses. That's exactly how the patent teaches it works. So it has to be in the datastructure.

Dr. Rhyne, who was pointed out to you earlier, he produced a report. And his testimony will be coming to you. And he shows you the structure on the left and says, well, that's a datastructure, and it looks sort of like the one on the right, and therefore, Microsoft infringes.

That was after his report and study. That's what he presented to us.

And, again, on first look, before you start looking closely, it looks like a pretty simple single datastructure. It looks like a datastructure.

You have to look a little closely, though, because there are some words obscured by the red box that Mr. Rhyne put there. Those words say, Merge structures for display purposes.

What does that mean? Well, it turns out there's no such structure like that in Word, so it does not exist. This is something he made up. He made it up off of something on the right that comes from another expert report.

Now you won't find that in Dr. Rhyne's report, Figure 13. It turns out that there's three structures on the right -- it's a little hard to see, but we'll show it to you better later -- that he scrunched together to create an imaginary structure on the left.

And that was the testimony that he prepared for this case. But the one on the left doesn't exist in real life.

That's like taking a bedroom from David's house and a living room from Kevin's house and a kitchen from Eric's house and putting them together and saying here's a house.

It's not a house; it's three rooms in three different houses. But that is the testimony -- the basis of the testimony that Mr. Rhyne prepared.

So it turns out, even Figure 13 from Dr. Martin's report, the one that he merged, even that's incomplete. You see those little orange boxes that we've got up there. It turns out, those aren't really labeled. There's a lot more to tell there.

So when you actually go and figure out how it works and you look closely, this is exactly what it looks like. You've got structures and content all over the place.

Now, it will be for you to decide whether that, as you look at it after -- as you look closely, is a datastructure in the meaning of the patent under the Court's construction. We think the answer to that is no.

The second requirement from the Court, again showing you the claim language and the Court's construction, not just a void with some lawyer words on it, is that the metacode map must contain the metacode. Clear requirement in Judge Davis' construction.

You see exactly what that means. Again, straight out of the patent. In the patent here is a metacode map, as shown in the patent, and you see it has a little caret to the left and caret to the right, chapter, title, paragraph, et cetera.

But now as you look at Dr. Rhyne's

supposed metacode map, it doesn't have anything right here in this green box. That's where he says, in theory, the metacode exists, but there's nothing there. There certainly isn't a less-than sign, chapter, and greater-than sign.

But when you see it, look really closely. There's a little magnifying glass, there again partially hidden behind that red box. What that magnifying glass means, it turns out, is there's a lot of detail in there that isn't shown.

And when you figure out what that detail is that wasn't shown, it turns out it's back to this. So, again, as presented, you've got to look a lot closer.

But even after you go through this whole process, you don't get what the patent says is the metacode. Even after that, what you get is just the word chapter -- you do get that -- the word title, the word paragraph, but you don't get these little marks that are called delimiters: The less-than sign, the greater-than sign, or the slash.

And it turns out those are important. Those are important, because if you don't have them, it's not a metacode. And therefore, you won't meet the Court's construction that it must contain the metacodes.

And there won't be a dispute about that among the experts, but that is not what comes out of that process. And the patent makes clear that those less-than signs and greater-than signs are important parts of the metacodes. And the standard, this W3C standard of XML makes very clear that those marks are required. But they're not there.

So the very thing that Dr. Rhyne is calling a meta map just isn't one.

The third requirement is that you have to map the metacodes to the input content stream. That sounds like a mouthful and it sort of is.

But, again, Judge Davis has given us a very clear construction that says, when you're making this map, you have this input stream with the original document, and you have to map the metacodes to the places where those codes existed in that input context stream.

And that's exactly how the patent works. You take that original document, and you identify where in that stream -- here is Position 37 for that one code, and here is Position 56, and that's how it works.

The problem is, Word does not work that way. Why not? Because Word is built on all the prior Word technology, which means it's going to work the way

Word works, not the way somebody else's technology works.

Rob Little, right here, is one of those that looked at that code, he'll testify exactly how it works.

And Stephen Gray is also here, an expert witness with over 30 years of experience in exactly this area, will testify about how Word takes that original input stream, but it changes it. And it changes it in a way that Word can understand. And it does so because of Word's particular technology, because we're building on Microsoft's technology, not i4i.

Now, as a result of that, is that input positions on -- in the input content screen that were 37 and 56 in the patent, the way the patented invention works, those don't work in ours. If we treated those as a position, it would break in our system, because the numbers are different.

Why? Because we've added a bunch of other things to that stream when we did that transformation. And there won't be any dispute about that among the experts either.

So the three key requirements where i4i has to prove all three, as construed by Judge Davis, they can't prove any of the three. And we think that's

what the evidence will show on their burden of proof on infringement.

Let's take a closer look at some of the evidence they offer, some of the evidence that Mr. Cawley offered today.

First, they'll put in a lot of evidence that XML is very important to Microsoft in general. True. XML is important. It has an advantage for many people. But i4i didn't invent XML. It didn't invent, and it will admit it didn't invent any of these types of uses of XML.

So the issue is not whether XML is valuable or even custom XML or Word ML -- Word ML, by the way and Office Open ML -- XML are types of XML that we invented particularly. And i4i agrees they don't infringe.

So when someone uses our Word product and does it with Word ML, the type of XML that we created, even i4i agrees there's nothing wrong with that at all. But the case isn't about whether XML in general is valuable. We invented our own XML, and that does not infringe even under i4i's position.

Interestingly, you can read that entire patent end to end, and it doesn't mention XML at all. The very thing they're now saying is the whole point of

it. Doesn't mention XML. Talks about SGML, which is a predecessor standard, different standard.

Also interestingly, although i4i is here now claiming that it really is the one that makes XML possible. Microsoft, not i4i, was one of the people involved in actually inventing and creating the standard for XML. That's this Jean Paoli Microsoft.

W3C stands for Worldwide Web -- that's what the 3 means -- Consortium. This is the same that creates XML. And it's Microsoft that's involved in the inventing, and now we're being accused saying that we have to pay them $200 million for something that we contributed to, not i4i.

Now, the second big thing you heard from Mr. Cawley today, that Microsoft met with i4i in 2001. That's true.

You also heard that that's something that we desperately turned to i4i on. That's not true. The evidence, we think, will show quite the opposite; that i4i was desperately pursuing Microsoft to try to make some money, which makes sense. A lot of people do that. And if they have technology that we think is worth buying, we buy it.

In this case, the people that Mr. Cawley was referring to in the meeting, they didn't write the

source code. They didn't design what's accused. They received no confidential information. And you heard Mr. Cawley say at the very end that Microsoft decided to, quote, take that invention, close quote.

But I don't want you to be confused by that. By that, he does not mean that i4i is arguing that we copied, because i4i is not arguing that. They said that clearly. There is no argument that Microsoft copied. So the issue isn't that.

Microsoft independently developed Word and the accused functionality. Mr. Little will testify at length about what he did and how he did it. And he had no access to Mr. Vulpe's information. He didn't know about the patent, didn't have any i4i information at all. He did it using Microsoft technology, not anything from i4i.

So first question: Does Microsoft Word work the same way as the Vulpe patent?

We think the answer to that is no. No, because we don't meet any one of all three requirements that must be met and because we used our own technology.

The second issue is: Did the Patent Office have the right information?

Well, that goes to the question of validity. These are the four prior art references we're

going to elaborate on. We will show you that each of these four is before i4i's work and invalidates their patent. And none of these four was considered by the Patent Office, not a single one.

Now, how do we know that? We know that from the very face of the patent in the book in front of you.

The part we've highlighted is titled References Cited, and you see four different things cited there. That's the place in the patent where the Examiner is required to list what it is he considered in deciding whether this was patentable.

So we know, there's no debate whether any of the four things were -- we're offering to you was considered. None of those four is on that list. And it's important to know that the whole process by which i4i was in the Patent Office getting this invention and talking to the Patent Office that is referred to both by Judge Davis and by Mr. Cawley, that's private.

That's a process which I think, as the video told you this morning, no other party has a right to participate. Microsoft can't be there, and nobody else can be there saying, hey, here's some prior art you ought to consider. It's a totally private proceeding,

totally confidential.

And the result of that is that only these four things were considered by the Examiner. And those four things do not include any of the four that we're relying on here.

So you, the jury -- as Judge Davis said and the video said, you, the jury, will be the first to assess whether this patent's valid in light of those four references.

Let's look at the four. The first is our own technology, not surprisingly. We have products of Word going back many, many years. The person that is accused here is colloquially called Word 11. That's the one that became Word 2003. Word 5 and 6 were much earlier.

June of 1994 is when Mr. Vulpe filed his patent application. Word 6 was released almost a year later, about six months earlier; Word 5, about a year and a half earlier, well before the patent application was filed and six years before the patent became public. The patent didn't issue until 1998. It was all confidential starting in 1994. But we had already released Word 5 and 6 years and years before that.

Now, why does that matter? It matters because Word 5 and 6 did the same thing they're talking

about here using separate codes to influence what the content looks like.

Here's an example. Particular codes that are called in those products are RTF codes, also known as rich text format. Rich text formats is codes that affect content. You see these two. They converted that particular bit of text to italics. These codes here called para create a paragraph. Same type of technology that they're talking about here.

Now, i4i will argue, well, those RTF codes really don't count as metacodes because they're formats. That's what Dr. Rhyne will say. The problem is the patent doesn't square with that argument.

Here is Mr. Vulpe's own patent where he says particularly where the metacodes are text formatted codes. So we know from his own patent that metacodes or formatting codes are included. So that argument doesn't wash with Mr. Vulpe's patent.

So that's Microsoft Word 5 and 6, well before, years before, and has codes that influence content which works the same way.

The second prior art reference, second validating art is something called SEMI-S4. Sometimes you'll hear it called S-to-the-4th or S superscript 4 or just S4.

Now, what that is, is a product that i4i sold itself. And you might ask, well, how can I browse on a product and invalidate i4i's patent? Good question.

The answer lies in the rule of the Patent Office that is absolutely clear and unchangeable. The rule is that you've got a one-year grace period before the time you file your patent application. And that's it. As Judge Davis said to you earlier, patents, it exists for a limited period of time.

So the way the Patent Office rules work is, you get a one-year head start, but you can't start selling products governed by that patent 366 days before you file a patent application.

Why? Because that would cheat the public on how many years you get protection. You can't lie behind the log selling products and then come out with a patent much later. You've got to file. It's a strict, strict Patent Office rule.

So the issue is going to be, does the evidence show an offer for sale by i4i before June 2 of 1993, which is exact -- exactly one year before June 2, even though it says 12, of 1994. That's the issue.

Well, there won't be a debate that i4i sold the product to a company called SEMI, which is a

semiconductor company or its consortium out in California back in the fall of '92. It was way before that magic date.

And it was actually even installed. It wasn't just offered for sale, it was installed in February of '93, well before that critical date. So there's no debate that there was a sale. The only debate remaining is whether what was sold to SEMI practiced Mr. Vulpe's patent? If it did, that absolute one-year bar, no way out of it. The Patent Office rule is strict.

So that's the question is, does what was sold to SEMI practice Mr. Vulpe's patent? Well, Mr. Vulpe answered that for us in his own words. When he's describing his company's technology, he says, Infrastructures has applied for a U.S. patent, and he gives the patent number to protect specific technology that it has developed.

The initial implementation is embedded into Infrastructure's S-to-the-4th product integrated -- targeted to the semiconductor and publishing industries. Well, the semiconductor industry was SEMI, the very company it sold to in '92 and '93. And S-to-the-4th was the name of the product they sold to SEMI. There won't be any dispute about either of those.

Now, that number that he says he got a patent for, that number matches exactly what the number is on the face of the patent that's in your books. That is the application number.

So he's saying the very same patent that's here covers what was sold to SEMI as the S-to-the-4th product. That's exactly what that Patent Office rule does not allow. That's jumping the gun. That's breaking the one-year rule.

But he didn't just say it there. In another document, he refers to -- it says, Summary of the progress to date, talking about the state of the technology, and he says U.S. Patent Application filed i4i flagship product S-to-the-4th vertical market product.

So in his own words, his own handwriting, he's telling you that S-to-the-4th product was what was patented, and that violates the Patent Office rule. The Patent Office's invalid. You can't jump the gun and sell products more than a year before you file the patent.

Now, there's a witness called Mr. Scott Young, currently works for another company. He used to be an employee of both SEMI, the company that was sold to, and i4i. And he'll testify squarely that Mr. Vulpe

told him that, yes, the patent at issue here covered that SEMI system, exactly what's not allowed.

The third piece of prior art is this Waterloo patent, this Waterloo product called Rita. Waterloo is also based in Canada incidentally, just down the road from where i4i is. They had a software product that worked on this computer a long, long time ago, way, way before Mr. Vulpe filed his patent application. No doubt that it's earlier.

And we'll show you videotaped testimony from Dr. Cowan, who is one of the people involved in the Rita project and the Rita program.

This is a picture of a screen shot from that that shows here, for example, para, para, end doc, beginning doc, body. Same type of things. Codes, content separated, exactly what Mr. Vulpe claims in his invention.

And the final piece of prior art is a patent, another U.S. patent, to a gentleman named DeRose. Here's the piece of the patent that they show you. Again, it's well before, years before Mr. Vulpe filed his patent application.

And this is a picture from the patent that shows, again, title, chapter, body, et cetera, and Mr. Gray will testify in detail why, in his opinion, his

expert opinion, this DeRose patent does everything that Mr. Vulpe claimed in his.

And the U.S. is unique in the world in saying a patent is invalid just because you're the first one to get to the Patent Office. You have to be the first one to make the actual invention.

And even if Mr. Vulpe was first to the Patent Office, he was not the first to make the invention. And in the case of DeRose, he wasn't the first to the Patent Office anyway.

Mr. Gray will testify at great length. He has extensive experience in exactly this area, and he'll tell you that in his view, after great study, why the patent is not infringed and is invalid.

Now the question of damages briefly. Now, Defendants don't normally like to talk about damages because they don't think there's any due. If they didn't meet the three requirements for infringement, then the patent is invalid.

But in this case, I'd like to, because I think the damage claim shows you something about what type of lawsuit it is.

Here you remember they've lost $25 million before our product was even introduced. The company was in financial crisis, couldn't make the

payroll. Yet they're asking for almost $200 million for a company that your product, people didn't want, where the marketplace had voted against the technology. The stark difference between those two tells you something about what type of claim this is. The reason Microsoft is successful is not because they took i4i's technology that the marketplace didn't want; it's because it was using Microsoft's technology that the marketplace did want.

And the stark difference between these numbers tells you a lot about what's really going on. But this also does. Here's a copy of what's being accused. I actually bought it from Amazon last week. And I did -- it has Word; it has Excel; it has PowerPoint; it has all sorts of technology that's not part of this case at all. So it has a whole lot. The price I paid for that was $97.98 from amazon.com.

What i4i is asking for as a royalty for every person that they claim uses the little slice of Word technology that they think is infringed -- they'll admit that there's thousands of things Word does that don't infringe, and there's lots of ways even through XML that don't infringe. They'll admit all of that. And they'll admit that Excel and PowerPoint and OneNote, those aren't a problem at all. Despite all of that,

they're claiming that for everybody who actually they think uses their technology on Word, they want a hundred dollars, even though the price is less than that.

Does that make sense? That will be for you to decide.

And you'll also hear about how they came to the idea of how many people use the technology, and we think that will tell you something as well. Because they did a survey, and the survey is one that we believe shows you what type of claim this is, and you'll hear that from Mr. Wecker as well.

So they want $200 million. They want it despite the fact that they can't meet any one of the three requirements for infringement where they have to meet all three. And they want it despite the fact that, really, they jumped the gun; they violated the Patent Office rules. And the patent is invalid based on prior art.

For those reasons, after you've heard all the evidence, we'll ask you to return a verdict for Microsoft. I thank you very much for your attention.

THE COURT: Thank you, Mr. Powers.

All right, Ladies and Gentlemen of the Jury. It's 3:00 o'clock now. We're going to take our afternoon break at this time. We'll be in recess for 20

minutes, until 3:20.

So remember my instructions. Don't discuss the case among yourselves or with anyone else.

Stretch your legs, get a cup of coffee, and I will see you back here at 3:20. The jury is excused.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Please be seated.

All right. Let me just remind the parties what our procedure is going to be when we come back. I'd like for both sides to have all of their witnesses that are here today, whether in the hallway or elsewhere in the courtroom. We'll do a mass swearing in. Just we'll line them up wherever they are, have them state their name. They'll be sworn in.

Is either side invoking the Rule in this case?

MR. POWERS: We are, Your Honor.

THE COURT: All right. The Rule will be invoked. I'll give instructions to them regarding the Rule.

Those -- have you reached an agreement as to who's excluded from the Rule?

MR. POWERS: Just the corporate representatives. We don't know who their's is. I believe it's Mr. Cox, but that's for them to decide.

MR. CAWLEY: That's correct, Your Honor.

THE COURT: All right. What about experts? Are they not excluded?

MR. POWERS: I would say not excluded.

MR. CAWLEY: Meaning they're not excluded from the courtroom?

MR. POWERS: Exactly. They are excluded from the operation of the Rule, but --

THE COURT: They are excluded from operation of the Rule.

MR. CAWLEY: We agree.

THE COURT: All right. Very well.

All right. The parties' representatives and experts will be excluded.

Now, as soon as we get the witnesses sworn in, the next order of business will be an offer of documents, and I believe I went over this with you in pretrial.

What I will want the Plaintiff to do is stand up and offer whatever exhibits the other side does not object to. You will stand up and say no objection. I will admit them. We'll get all those documents in en

masse. Then at the same time, I'll do the same thing for the Defendant.

Do y'all have your lists ready? Have you met and conferred, and are you ready to go on those?

MR. POWERS: We certainly have with regard to the Plaintiff's exhibits that they've given us for direct examination.

There's no -- been no exchange for whatever was going to be used on cross, because I'm not sure what's going to be used yet, of course. But for that, we would intend to offer it as we went along.

THE COURT: Okay. Well, what I want to avoid is having identified this exhibit, and, Your Honor, I offer this; any objection. That just bogs us down.

So you pretty well know what exhibits you're going to use, and so not just for this witness, but for the whole case, I'd like to just get that out of the way, if you're prepared to do it today.

Are you?

MR. POWERS: There are no objections to the exhibits that we're going to use, so I'm certainly happy to hand Mr. Cawley a list before each witness.

I don't -- we didn't have an agreement nor an order from the Court saying we have to give them

cross exhibits the night before or anything. I Certainly wouldn't want to do that either way. I think that's -- I don't know which ones we're going to use, and I don't -- wouldn't want them admitted until I know which ones I use.

THE COURT: All right. When do you plan to offer those then?

MR. POWERS: Anytime the Court asks me to. I would suggest perhaps, since they're not objected to, and I'll represent that every exhibit I'll be using with both witnesses today are not objected to, I would do -- not -- I would not go through the process Your Honor described of identifying, et cetera, and just offer it at the end, once we know which ones we actually use, because --

THE COURT: All right. Is that acceptable?

MR. POWERS: -- I expect a large number.

THE COURT: Is that acceptable to you, Mr. Cawley?

MR. CAWLEY: Well, offering it at the end kind of begs the question, because when he confronts a witness with documents, then we may have a dispute on our hands about whether that's objectionable or not.

THE COURT: I thought he said that you

had already agreed they were not objectionable.

MR. CAWLEY: Oh, for today?

MR. POWERS: Yes.

MR. CAWLEY: Oh, I'm sorry. Yeah, for today, I don't think there's an issue.

MR. POWERS: For every exhibit I'm intending to use, they do not have an objection noted to them.

THE COURT: Okay. Well, whatever exhibits you're prepared to offer en masse, before we start with the first witness, I will hear that offer and acceptance, and they'll be admitted into evidence.

That doesn't preclude you from offering other exhibits later during the course of trial, but I would just like not to bog it down with a lot of individual offerings.

That will be the procedure each day. If you don't have them for the whole trial, at the beginning of each day, I will give both sides an opportunity to offer their exhibits for that day, and you can offer them.

If you intend to offer them, Mr. Powers, at the end of your cross-examination, for example, be sure you remember and that you have an agreement that you can use them without an offer at the time.

If you don't have an agreement, then you need to offer it, and I'll hear the objections.

At the end of each day, I would order both sides to prepare a list of those exhibits that were admitted that day and furnish it the next morning to Ms. Ferguson so she can reconcile it with her records to be sure we have a clean record on it.

Also, I need from both sides -- I need three hard copies of your exhibit list and three hard copies of your witness list.

Do y'all have an agreement as to exchanging who your witnesses are going to be for the next day and what exhibits --

MR. CAWLEY: Yes, Your Honor.

THE COURT: Okay. Very good.

Anything else before we take our break?

MR. CAWLEY: I guess just a point of clarification on a slightly different subject.

As it turns out, our first witness, Mr. Owens, may have some testimony that will be relevant to inequitable conduct. So does the Court want to hear that from Mr. Owens after the jury is excused today?

THE COURT: Yes.

All right. We'll be in recess until 3:20.

COURT SECURITY OFFICER: All rise.

(Recess.)

COURT SECURITY OFFICER: Be seated.

All rise.

(Jury in.)

THE COURT: Please be seated.

All right. Ladies and Gentlemen of the Jury, we are about to begin the evidence phase of the case in just a few moments, but, first, we're going to take care of a couple of housekeeping matters.

I would like to ask the parties to have all their witnesses that are here that are going to be testifying in the case to please stand so that we can swear them in.

All right. Very well. Let's start here, and if you would state your name for the record, please, sir.

A WITNESS: Stephen Owens.

A WITNESS: William Cox.

THE COURT: Okay.

A WITNESS: George Gerstman.

A WITNESS: Michael Wagner.

A WITNESS: Stephen Gray.

THE COURT: Back in the front here (indicates)?

A WITNESS: John Tulley.
A WITNESS: Keith Thomas.
A WITNESS: David Martin.
A WITNESS: Tom Rhyne.
A WITNESS: Michel Vulpe.
THE COURT: Okay. And?
A WITNESS: Robert Little.
THE COURT: Very well. Did the court reporter get all those names alright?
All right. If you would, Ms. Ferguson, please swear the witnesses in.
(Witnesses sworn.)
THE COURT: All right. If you would remain standing just a moment and let me instruct you and explain to the ladies and gentlemen of the jury, the attorneys have invoked what's called the Rule in this case, which means that those of you who are witnesses -- and if you're not a representative of a party or an expert witness, then the Rule will apply to you.
And the rule is this: That during the course of the trial, you will remain outside the courtroom, except when you testify. And you shall not discuss the case or the testimony or anything with any other person, except the attorneys in the case.
So unless you are excused from the Rule

as being either a party representative or an expert, at this time, I would like to ask you to leave the courtroom and wait in the witness rooms.

And the rest of you may be seated.

(Witnesses exit the courtroom.)

THE COURT: All right. And I will expect counsel for both sides to inform your other witnesses that the Rule's been invoked and also to inform the Court whenever a witness appears the first time that has not been sworn.

All right. Do Plaintiffs have any exhibits they would like to offer at this time?

MR. CAWLEY: Yes, Your Honor. Exhibits 1, 4, 7, and 8.

THE COURT: 1, 4, 7, and 8.

Any objection?

MR. POWERS: No objection, Your Honor.

THE COURT: Be admitted.

Does the Defendant have any exhibits they wish to offer?

MR. POWERS: Yes, Your Honor. 2058.

THE COURT: Is that one exhibit?

MR. POWERS: That's one exhibit.

THE COURT: All right.

MR. POWERS: DTX2058. 2058.

THE COURT: All right.

MR. POWERS: 2202, 2366, 2380, 2395, 2396, and 2065.

THE COURT: All right. Any objection?

MR. CAWLEY: No, Your Honor.

THE COURT: All right. Those will be admitted.

All right. Plaintiffs may call their first witness.

MR. BURGESS: Your Honor, Plaintiffs call Stephen Owens.

THE COURT: Stephen Owens.

MR. BURGESS: May I proceed, Your Honor?

THE COURT: Yes, you may.

STEPHEN OWENS, PLAINTIFFS' WITNESS, SWORN

DIRECT EXAMINATION

BY MR. BURGESS:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Would you please introduce yourself to the jury.

A. Yes, sir. My name is Stephen Owens.

Q. And why are you here today, Mr. Owens?

A. I'm here to discuss the patent that Mr. Vulpe and myself were granted by the United States Patent

Office.

Q. And you understand that's the patent that's at issue in this case?

A. Yes, sir, I do.

Q. Referred to as the '449 patent?

A. Yes, sir, that's correct.

Q. Where do you live, Mr. Owens?

A. I live in Caledon East in Ontario, Canada.

Q. Is that near Toronto?

A. Yes, sir. It's about 45 minutes north.

Q. Are you married?

A. Yes, sir.

Q. What's your wife's name?

A. Leslie.

Q. Do you and Leslie have any children?

A. Yes, sir. Twin boys.

Q. And how old are your sons?

A. Twelve years old.

Q. That must be a handful.

You know, it occurs to me that yesterday was Mother's Day, and I know you were here with me, but did your sons do something special for their mom yesterday?

A. Yes, sir. I had to delegate the Mother's Day tasks to them, and they got up early, cleaned the house, and made breakfast for their mom. So I was pretty happy

with my delegation.

Q. Now, Mr. Owens, are you the first inventor in your family?

A. Well, no, sir, I guess not. My grandfather was perhaps famous. It was certainly a family story where he was the first one to use cross-country skis to get from lumber camp to lumber camp in northern Quebec instead of using snow shoes, which was the current technology.

Q. Is that what we call the Great White North?

A. I think that's how it's referred to up here, yes, sir.

Q. Now, Mr. Owens, what do you do?

A. I have a very small software consulting firm.

Q. And can you tell us what's software?

A. Well, software is really anything that runs on a computer and makes it do what computers do.

Q. What -- what might be a typical example of a piece of software that people are probably familiar with?

A. Well, certainly we've heard about Microsoft Word in the introduction of this case, and that's a good example. Also, the MAC operating system might be another example that people would be familiar with.

Q. How long have you been in development

software?

A. It's been a while now. About 27 years.

Q. And do your boys like computers like their dad?

A. Yes, sir. The older of the two twins says he wants to take over the family firm when he gets a bit older.

Q. Now, if you could, you've got a notebook there with a couple of exhibits in it, and if I could ask you to look at the first one, and you can also see it on your monitor.

Can you tell the jury what Plaintiffs' Exhibit 1 is, please?

A. Yes, sir. That's the patent that's at issue in this court -- in this case. I believe it's being referred to as the '449 patent.

Q. And are you one of the inventors?

A. Yes, sir.

Q. And are you proud of this patent?

A. Yes, sir, very proud.

Q. Let's take a little bit closer look at the cover of the patent. I see there is a line for the inventor.

Is that your name, sir?

A. Yes, sir.

Q. And who are the other gentlemen that are listed?

A. That's Michel Vulpe. He's the founder of Infrastructures for Information.

Q. And do you understand that we'll hear from Mr. Vulpe later in the case?

A. Yes, sir.

Q. And is there a -- is there a shorthand that people often use to refer to Infrastructures for Information?

A. Yes. It's usually referred to as i4i.

Q. Now, we saw in opening and we can see here on the cover of the patent that the application was filed in June 2nd of 1994.

Now, when the application was filed, were you working for i4i?

A. Yes, sir. I was consulting for i4i at the time.

Q. Were you employed by i4i?

A. No, sir.

Q. Have you ever been employed by i4i?

A. No, sir.

Q. And did you eventually stop consulting for i4i?

A. Yes, sir, I did.

Q. And about when was that?
A. That was around 1995.
Q. So after the application was filed?
A. Yes, sir.
Q. Now, did you ever come back after you left i4i and do some additional consulting?
A. Yes, sir. I did a couple of projects for them over the next few years.
Q. Now, if I were to ask you about things that happened at i4i after you left in 1995, would you be able to answer my question?
A. Well, I could certainly answer questions about the particular projects I was working on, but I wasn't working in the i4i offices anymore. So I only have the most general information about the company.
Q. Now, we've heard quite a bit about SGML so far.

And can you just -- we're going to talk about it in some detail, but very briefly, could you remind us what it is?
A. Yes, sir.

So SGML is a way to add information to documents to make them, hopefully, of higher value and more usable in the future.
Q. Now, are you -- are you familiar with SGML

now?
A. Yes, sir.
Q. What about XML; are you familiar with that?
A. Yes, sir.
Q. And did you see at opening Mr. Powers made a point of emphasizing that your patent doesn't mention XML?
A. Yes, sir, I did.
Q. Is there a reason for that?
A. Yes, sir. XML actually had not been invented at the time we filed the patent application.
Q. Now, in terms of your patent and your invention, is there a significant difference between SGML and XML?
A. No, sir, none at all.
Q. Now, when you first came to work with i4i and Mr. Vulpe, had you heard of SGML?
A. No, sir, not at all.
Q. How did you come to learn of it?
A. Well, I was lucky that I was working with Mr. Vulpe. He was a very early expert in SGML, so he was kind of my first teacher in explaining the concepts to me.
Also, I was working on projects that involved the technology, so I was kind of learning on the job.

And, again, I was also reading material on the -- on the standard.

Q. Do you remember the first project that you worked on at i4i that involved SGML?

A. Yes, sir. That would be the SEMI project.

Q. Is that the same SEMI project that we heard about in Mr. Power's opening?

A. Yes, sir.

Q. Now, what software did you create for SEMI?

A. So SEMI, as you heard in the opening, is the consortium for manufacturers of equipment for making semiconductors. And we worked on a system to help them track their membership, create standards, and allow their members to vote on those standards.

Q. This is a little hard to read, but based on your experience, can you -- can you tell me what this is?

A. Yes, sir.

That would be an example of a document created by the SEMI system for use by SEMI.

Q. Now, this -- this -- I'm having a hard time reading it. And can you explain why this is so difficult to read? I mean, other than the fact that it's small.

A. Yeah. Yes, sir.

So this is an example of an SGML document. And one of the reasons it's hard to read is that there's a bunch of special characters that really only SGML cares about. And people trying to read the document, not only don't care about, but it's actually just confusing.

Q. Is there -- is there really a document with real information in amongst this mess?

A. Yes, sir. If you know how to read it, it's buried in there.

Q. So did somebody actually have to keep track of all this and type this all in?

A. Yes, sir, they did.

Q. And, again, is this an example of what a typical document created with your SEMI software would look like?

A. Yes, sir, it's a fair example. It's perhaps a little short but the same kind of document.

Q. Now, let's take a look at a very different kind of document.

Just looking at this, do you notice any differences from the document we just saw in the last slide?

A. Yes, sir.

So the key difference is this is much more

familiar. This document has not been marked up, as we heard in opening, with SGML. So this is much more the kind of document that everyone is familiar with writing themselves, either by hand or using a word processor.

Q. Now, can you tell the jury why this document looks so different from this document?

A. Well, I referred just a minute ago to adding value to documents using SGML, and it might be a little hard to see when you see this mess. But the difference really is that this document that we're looking at now has had SGML applied to it, whereas the second document has not.

Q. Now, did you eventually deliver your product to the folks at SEMI?

A. Yes, sir, we did.

Q. And what did the managers at SEMI think about your work?

MR. POWERS: Objection, Your Honor. He can testify to what was said, perhaps, depending on its relevancy, but he can't testify about their internal feelings.

THE COURT: Restate your question, please.

Q. (By Mr. Burgess) Were you ever made aware of what the managers at SEMI thought about your work?

MR. POWERS: As phrased, it calls for hearsay, Your Honor.

THE COURT: Overruled.

A. Yes, sir.

My understanding was that those managers did appreciate the value that they were getting out of the SGML.

Q. (By Mr. Burgess) And what about the poor folks that actually had to create documents like this? What did they think about your work?

A. Well --

MR. POWERS: Same objection to relevance.

THE COURT: Excuse me?

MR. POWERS: Same objection. He asked how those people thought about it, and this witness can't answer it.

THE COURT: All right. Restate your question.

Q. (By Mr. Burgess) Did you -- did you come to understand what the folks that had to create these documents thought about your product?

A. Yes, sir.

I had a number of conversations with people who had to create documents for SEMI, and they weren't real happy at being forced to type what they thought had

a pretty meaningless code.

Q. And so did you do something to help those folks out?

A. Yes, sir, we did.

Q. And is that what you patent -- that's part of what your patent is about?

A. Yes, sir. It certainly is part of the invention.

Q. Now, at the time that you did your work for SEMI, if someone had wanted to create an SGML document -- for instance, a document like this -- what software was available for them to do that with?

A. Well, really, it was what I'll call the text editor, and a text editor really just lets you type letters. And by that, I just mean individual characters, so it wasn't really very easy to use.

Q. How does -- how does a text editor compare to the tools that you delivered as part of your SEMI product?

A. A text editor is really very simple. It just lets you add the characters.

In the SEMI product, we gave a little bit more help in terms of letting you put the tags in a little more easily, but it was still essentially a text editor.

Q. Now, back in the same time period when you did your work at SEMI, if you had wanted to create a document like this, a simple letter home to Mom, for example, what sort of tools were available for you to do that with?

A. So most users would have been using word processors, like WordPerfect or Microsoft Word, to write documents like this.

Q. Now, at that time, could a word processor like that have created a formatted document that also had SGML?

A. No, sir.

Q. So with that background, can you explain to the jury what one of the problems that you sought to solve with your invention was?

A. Yes, sir.

So we had a mismatch, really, where people wanted to use tools they were familiar with to create their content. And at the same time, management wanted to take advantage of SGML, and we didn't have a solution to offer to them.

Q. Do you think it would be helpful to explain this concept to the jury if you could draw a little diagram on the whiteboard?

A. Yes, sir. I hope that would help.

MR. BURGESS: Your Honor, may Mr. Owens have permission to approach?

THE COURT: Yes, he may.

MR. BURGESS: Thank you.

Q. (By Mr. Burgess) So what is it that you could draw for the jury that would be helpful to explain this?

A. So I'd like to just illustrate the different concepts that we were trying to reconcile, trying to make into one.

Q. Okay. So what's the first part of that?

A. So the first part represents with this big circle, and this is really the applications that the authors of the content wanted to use. And I used as an example before, you know, WordPerfect, Microsoft Word, and --

Q. Did those applications have to be word processors?

A. No, sir.

So it could have easily been a drawing program, if they needed to create a drawing instead of text.

Q. Okay. Now, what about the SGML piece that you described?

A. So the other half of the equation is what I'm going to call an SGML application, and that's really the

thing that delivers the value that we talk about in SGML.

Q. And so what was it that you hoped to accomplish?

A. So what we wanted to do was come up with an application that gave them the ease of use and the familiarity that users had from using these types of tools in the application.

Q. Is there another piece to that?

A. Yes, because what we also wanted to do was not lose the value from the SGML application.

Q. And so did your invention provide this solution?

A. So among other things, it, in fact, solved this combined best-of-both-worlds picture that I'm trying to illustrate over here.

Q. So you said among other things. Were there other problems that your invention addressed?

A. There were.

So applications that weren't necessarily content editors also had problems with combining that SGML content that you saw with the -- with the application. And we were trying to solve a bunch of them, including being able to apply many different SGML structures on to one document.

I'll show a bit more about that in the near future.

Q. Thank you, Mr. Owens. You can take a seat, please.

A. (Complies.)

Q. Now that you've talked about one of the problems that your invention solved, let's start to talk about how you actually did it.

Have you -- have you created a few boards that illustrate the way in which your invention solved this particular problem?

A. Yes, sir, I have.

MR. BURGESS: Your Honor, could we have your permission for Mr. Owens to approach the other easel and answer a few questions about his boards?

THE COURT: Yes, sir.

MR. BURGESS: Thank you, sir.

Q. (By Mr. Burgess) So what is it you want to explain to the jury using your boards, Mr. Owens?

A. So what I'd like to try to do is put the invention in context, because I think that it can be a bit hard to appreciate sort of how it fits in and how it delivers value.

So I created a number of boards that try to provide some context to the history of this.

Q. Okay. Now, right away, I notice at the bottom of that first board there is a timeline, and it looks like the part that you've highlighted runs from the printing press in 1455 through 1986.

What's the significance of that timeline?

A. So as we heard in the opening statement, documents have a really long history. People have been writing them for a long time. They've been scratching them on rocks.

And one of the time periods that was most, you know, exciting in terms of standardizing the way documents look and the type of convention we have in the way they look is the invention of the printing press in 1455, which, of course, was used to print the Gutenberg Bible.

Q. Now, the top part of your board, what's illustrated there?

A. So up here we have, you know, a document. You know, the subject matter isn't really terribly important. In fact, we've made it bland by design. But it's just a document that anybody would be familiar with. The layout looks fairly standard, doesn't have all those nasty codes in it. Just a simple document.

Q. Now, does this document, this simple document, convey any information?

A. It does. And what I think is interesting is that the outcome of what's in the document, they would usually say, well, there's a bunch of words, and I can read my document. This is a description of my document. And many people might also say, well, it has a title, and the title is My Document.

Q. Is there any other sort of information that's conveyed by this document?

A. There is.

So, you know, if we look at the way -- I think it's interesting that everybody is immediately going to say, well, it's just a title. But few people would say, well, I wonder how I know it's a title? And, of course, you know it's a title because it's bold; it's large at the top; it's centered; it's got some spacing. That's all formatting.

Another thing that people might suspect is that often in documents the very first paragraph gives you an overview, just explains generally what the document is about.

So if you started reading a paragraph and it said this is a description of my document, you might say, yeah, this one is, in fact, an overview of the document.

Q. Is there a term that we can use to talk about

that sort of information?

A. Yes. So when I've read my document, those words are in black and white on the page. So they're kind of right there in the document. And that I call explicit information, because it's explicitly in the document.

That other type where we say this is the title, this is an overview, that information is what I call input. And that really means you have to guess a little bit. It's not written anywhere in the document that it is those things.

Q. Now, in addition to what you just described, is there any other implied information in this document?

A. There is. And, again, it comes back to inventions and formatting.

Almost everybody is going to recognize this is a date just because of the way it's laid out, the characters there. Anybody who lives in Tyler is going to recognize this as a city name. And as soon as you see it near a state, Texas, almost anyone, even those of us who doesn't know the city of Tyler, would recognize that as a location.

Q. Is there anything else?

A. So slightly more subtle, this arrangement with numbers on a page almost always means the phone

number to, certainly, people in North America. So I think you would pick that out as a phone number.

Q. Now, once this document is created and saved away in a file system, what happens to that implied information?

A. Yeah, that's a great question.

And the way I like to think about it is when someone writes this document, they have all kinds of information in their head. They're really thinking about what they're writing, and, of course, they know their purpose. But they don't put all of that information into the document. They only put part of it.

So when they save this document, some of the information that that person was thinking about at the time is, in fact, lost. And unless you can find that person and ask them questions about it, you may not know exactly what was going on when they wrote that.

Q. Okay. Now, following along your timeline on the bottom of your board, did something happen that helps us to deal with this problem about losing vital information?

A. So that takes us to the next board.

THE WITNESS: Thank you, sir.

A. This one picks up where the last one left

off.

Q. (By Mr. Burgess) All right. Now, I notice we've got a continuation of your timeline, a much shorter slice highlighted here from 1986 to 1993.

What's the significance of SGML standardized that you've highlighted right above the timeline?

A. So the SGML standard was fully ratified on this date, and that means we have this very long period, hundreds of years, where documents were really controlled by their formatting, by the way you lay them on the page, the way they look, the types of things the way you write them.

In this time period, we add something new to that picture.

Q. I think it's clear, but just so there's no confusion, did you or Mr. Vulpe invent SGML?

A. No, sir.

Q. Who did?

A. Dr. Charles Goldfarb.

Q. Did you or Mr. Vulpe ever claim to invent SGML?

A. No, sir.

Q. Now, at the time that you've highlighted here, from 1986 to 1993, was there a large group of people that were interested in working with SGML?

A. No, sir. That's a very small number, sir.

Q. So we see a document here on the top part of your slide.

What kind of document is this?

A. So this is an example, and it's a very simplified example. In fact, I intentionally omitted some things that would even be required in SGML, but this is just meant to be an example of how an SGML document looks.

Q. Is this the same type of document as the really complicated one that we saw on the overhead earlier?

A. It is. It's a simplified example, but it's exactly the same structure.

Q. Now, if we can, if we can pull up your first board on the overhead, so we can kind of compare and contrast.

This looks -- this looks different. What are the differences?

A. So I think the first thing that everyone will notice is this one is just plain harder to read, so we've lost the formatting. We don't have that big bold title anymore. The paragraphs aren't laid out as nicely. And I think that's kind of immediate.

Q. Is there any other difference?

A. So we've lost all that formatting. We have gained the wonderful advantages of some special characters, less-than/greater-than sign.

Q. And do you discuss these tags in the patent?

A. Yes, sir.

In the patent, actually, we refer to these as metacodes, and there's a reason for that terminology, because they're slightly different when we get into that.

Q. Okay. Now, do these metacodes have anything to do with the implied information that we discussed with respect to your first board?

A. Yes, they do.

So wherein the first board we talked about, we knew that was a title, because of its formatting and it's location.

Now we've made that guess of the title, which is a pretty strong guess, but we made it very explicit. Now it is in black and white. It really says this is the title.

Q. Are there any other examples like that in this document?

A. Yes, there are.

So we, again, had a good guess that the first paragraph was probably an overview, and that guess

turned out to be right. So we've got an overview there. I want to draw your attention to the date. We had a guess that that was a date, and certainly more than a guess, because we were right about that, but notice we didn't get it immediately.

We knew it was a date, but what we didn't know is that it was a trial date. And we didn't know that because the person who wrote the document hadn't put that information in.

Q. Are there any other examples of that sort of information in this document?

A. So, again, call your attention to the city. We got that right again. It was a city, but more than that, it was a trial location. So, again, we got more important information from that document.

And the final example, we've now picked out not just the phone number, we've actually identified that this is an area code. And it just goes back to the opening comments that one of the values that we're offering is to find this information again.

Q. Now, you discussed with respect to your first board the possibility that some of the implied information would get lost.

Now, in this case when we create this document and save it away, what happens to that

information?

A. So now that we've made the information explicit, now the information is really in the document in black and white, we can actually just read it. When you save the document, all that information goes with it, so it's now permanently associated with the document. You'll always know what it is.

Q. Let me just ask you one more thing to make sure there is no confusion. We'll just use the title as a simple example.

I notice that there are -- there are -- there's a title here and there's a title here (indicates). Why are there -- why is that there twice?

A. So what happens is you need to know that this tag or metacode is here, because that tells you what's coming up is the title. But the other thing that you need to know is where does the title stop? How many characters are inside it?

So what happens is, this is called start tag. And it says -- the title will be starting, and then here's the end tag. It just says the title ends here, and this slash here tells you that you're at the end.

Q. Okay. So continuing to follow along your timeline, did something happen next that affects the way that we can use documents like this?

A. Yes, sir. We get another change.

So later in 1993, we get a new phase of this work.

Q. And why do you label this one the invention?

A. So this is the period where we came up with the idea. That's a discussion to file the invention.

Q. Okay. And I notice right away sort of an obvious difference between this one and the last one, which is that we've got two boxes on this that we didn't have before.

Can you explain what these two boxes are?

A. Yes. So in the invention and one of the things that we've done is recognize that the content that the document -- what was in that very first slide is not the same as the information about the document and no longer has to be mixed.

As part of that recognition, you actually create two separate places, two distinct places to store that information so that we can tell -- we can distinguish between those two types of information.

Q. Now, the right side of the board you've labeled mapped content. What does that mean?

A. So I think everyone is fairly familiar with the word content. It just means the words that are in the document, My Document and its content.

So mapped content means that this is the content, what you would expect to find in a document, but it's got more value than it used to have and, therefore, the word mapped.

Q. So the left side of the board is labeled metacode map.

Can you tell us what that means?

A. So if we go back to Slide 2, we talked about those tags, which are called metacodes in the patent. And here in the metacode map, you see a list of all the same tags that were in the second document.

Q. Is that all there is to the metacode map, just a list of names?

A. No, sir. That wouldn't be enough.

You also have to know how the map relates to the mapped contents, because you have to know that they're together; they're part of the same thing.

Q. And how does the metacode map represent that relationship?

A. Well, what it does is it needs to -- it needs to know where each metacode has an effect in the document. And that's actually called the address use in the patent, and that address is the way you identify where this metacode is in this document.

Q. So how does that work?

A. So let's assume this is part of a larger document we've been in discussion about. All the characters are in it, but if this is Character 100 right here (indicates), that means I am 100 characters into the document, which we counted from the beginning. All we do is we say this title metacode starts at Character 100, and then we just count and we say, okay, I start here; I go 101, 102, 103, 4, 5, 6, 7, 8, 9, 10, 11. So we put 111 in at the end of it, and that tells us that this title metacode takes in all the content starting with this M all the way up to the T at the end.

Q. And could you do the same thing for, say, the trial date entry on the map?

A. Sure. So, again, we see the word content in here. I'll say that this is Character 200 counting in round numbers. So we would put in here in the trial date that it starts at Character 200, and that goes 201, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, so up to 212.

And now we can say that that trial date spans that whole region.

Q. Could you do that same thing for the remainder of the entries in the map?

A. Yes, you could. But you would fill in all of those -- all that information, then you would know where all the metacodes are in the document.

Q. Okay. Now, I'm going to put your first board back up on the screen, the overhead.

How does the combination of the mapped content and the metacode map and the board that you're just discussing compare to the document that we saw on your first board?

A. So I think it's important to recognize that this here, the mapped content, is identical. It looks the same; it's got the same content, so it's really the same document.

What this adds to the first board is that on the first board we didn't have the extra information. We didn't know that was the trial date. We didn't know it was the trial inclusion, so what is added is that extra information.

Q. Okay. And so how does the combination of the mapped content and the metacode map on your third board compare to the SGML document that we saw on your second board?

A. So this combination preserves all the information that was in that second board. We've still got all that explicit information that we talked about, but it adds back the nice formatting that people want to read and can read easily.

Q. Thank you, Mr. Owens. You can take your

seat.

A. (Complies.)

Q. Now, just a few minutes ago you used this whiteboard to illustrate for the jury one of the problems that you wanted to solve with your invention.

A. Yes, sir.

Q. Can you explain to us how you mentioned that you just described to actually solve that problem?

A. Yes, sir.

So what happens is that -- you know, if we go back to that very long history lesson at the beginning where we talked about how -- way back at the Gutenberg Bible, we came up with these printing conventions, for a very long time, it was all about putting the formatting and the content together.

And when we started developing computer systems to do this, of course, we followed the same thing. We kept putting everything together because that's what we had always done for hundreds of years. There's a lot of human history there.

And once you realized that those two things don't have to be together inside a computer anymore, because the computer is more flexible than paper is, then it opens up a whole bunch of possibilities.

And in particular, what it lets you do is you can refer to things that are not just plain text. So you can have a word processing document in a word processor like Microsoft Word but add all of that value that's in the -- in the mapped content and make all of that information explicit, but continue to keep the same, you know, familiar word processing.

Q. Now, does it matter to the metacode map what's in the mapped content?

A. No. I think that's -- you know, that's kind of the key thing now is that because we're not trying to mingle everything together, we no longer care what kind of content is in the mapped content.

Q. Could the mapped content be just plain text?

A. Sure. Yes, it could.

Q. Could it be formatted text?

A. Yes, sir, it could.

Q. Could it be pictures?

A. Yes. You actually could mark up a drawing or a picture in the same way that you mark up text.

Q. Could the mapped content contain technical drawings?

A. Yes, sir.

Q. Could it contain blueprints for a house?

A. Yes, sir.

Q. And could it even contain metacodes?
A. Yes. It's -- an interesting outcome is that because we really don't care what's in there, even if it were an SGML document itself, it could still be referred to.
Q. So just again so we're clear on this, is your invention limited to working with word processors?
A. No, sir. That actually was just one of the outcomes of the invention.
Q. And, again, can you give us some examples of other sorts of programs that your invention could work with?
A. Yes.
So it could work with, for example, you know, a program that keeps inventory for a manufacturing facility. You could describe inventory parts. And you could even, then, use those descriptions to feed into a robot on an assembly line to pick those parts up.
Q. Why is that able to happen?
A. Well, again, because the invention makes the markup, that explicit information, independent of the content, then you can really apply it to anything.
Q. Now, we just looked at an, admittedly, very simple example on your boards. But can you explain to us why this technology matters to real companies, real

organizations, real organizations that create lots and lots of real documents?

A. Yes, sir.

So I think when you -- when you see a very simplified example like this, it's easy to say, well, okay, I see what you're doing, but why would you want to do it?

And I think the why comes back to a very different scale of document production than any of us who are used to who have written letters or memos or, you know, sort of individual documents.

Q. Can you give us a real-world example of where this technology would make a real difference for a real company?

A. Yes, sir.

So if you look at a company like Boeing, for example, they produce their planes obviously, and those airplanes last for decades. They are well-built, so they stick around for a long time.

With each plane comes millions of pages of documentation of that airplane. It's actually a requirement that they keep that. So the value to Boeing of all of those millions of pages, the effort they have to go into producing them, the effort they have to go into to preserve them over time, and then to use them to

find things in the future, there's just huge, huge value there.

I mean, there are lots of other examples, like the FDA where they have to process drug applications, like the Patent & Trademark Office that has to process, you know, lots of patent claims every year.

Q. And is your invention an important part of that equation?

A. Yes, sir, I think it is.

Q. Can you explain why?

A. Well, so all the value that I discussed happens if you make that what we call the implicit information, so the information we were guessing about, if you make that explicit, if you really put it in the document.

But the problem is that just like I got pushed back from people at SEMI when I tried to say, well, do it my way, companies don't want to give up on old familiar tools and the familiar processes that they have. So that means that it may not be possible to realize that value to get the value out of SGML or even XML just because of that disconnect, that mismatch.

Q. Okay. Thank you.

Do you feel like your invention was an

important step in sort of the way we progressed over time and how we think about and how we use documents?

A. Yes, sir, I do, because I think it was -- I think it was a split, a separation for things that used to be joined. It was one of the first things to really recognize a receptor.

Q. Now that we've talked about what you and Mr. Vulpe actually invented, or at least one of the applications of your invention, let's talk about how you and Mr. Vulpe came to that invention.

Can you describe for us how you met Mr. Vulpe?

A. Mr. Vulpe was my brother's next door neighbor.

Q. And who is your brother?

A. Richard Owens.

Q. And how did that lead you to meet Mr. Vulpe?

A. Well, my brother called me and said that his next door neighbor was looking for someone to help out on a software project and suggested that I get in touch with him.

Q. And did you?

A. Yes, sir. I called right away.

Q. And what came of that?

A. Mr. Vulpe described the project he was

working on and that he needed someone to help out, and since I was available and looking for work, I suggested that I would be very happy to.

Q. And is this when you began to consult with i4i?

A. Yes, sir.

Q. And can you remind us what your first SGML project with i4i was?

A. Yes, sir. That was the SEMI system.

Q. And just so we'll recall, is that the system that would create documents that looked like this (indicates)?

A. Yes, sir, that's right.

Q. And could you remind us what you came to understand the folks that had you create these documents thought about your system?

A. Well, the folks who helped to create it weren't as happy as we would have liked. I think they felt that we were messing up their workday.

Q. Did you ever try to convince them that, you know, this formatting stuff is just not that important. SGML is really powerful, and that's really what this is all about?

A. Well, yeah, I guess I was kind of young and naive, and I tried to make the argument that, hey,

there's a lot of value here, guys, and you should get on the train and go with it.

Q. Were you successful?

A. No. I think I would have to say I was definitely not.

Q. And did you have similar experience dealing with other clients?

A. Yes, sir. We had a number of client engagements where we would talk to the content authors, the people who had to really do the work of creating the documents. And they weren't as keen on our vision of the SGML documents as we were.

Q. Did you ever come around and change your viewpoint to become more sympathetic with the feedback you were getting from your clients?

A. Yes, sir, I did. And I think that, you know, what happened is that when I started out, I was looking purely from the SGML side, and I was kind of neglecting those hundreds of years of human experience and learning with these nicely formatted documents and sort of saying, oh, that stuff doesn't matter; let's just do it the new way.

And I think they quite rightly pointed out that maybe I was being a bit short-sighted in that regard.

Q. Did this change in your own point of view help to lead you to your invention?

A. Yes, sir, it did, because once I realized that both points of view were important, that you had to take into account all the things people were familiar with, but, hopefully, still try to deliver the value that we were offering, then I think it made it a lot clearer that we needed to find a way to get those things to work together.

Q. Do you remember the day that you and Mr. Vulpe had your eureka insight?

A. Yes, sir. I don't remember the exact date, but I sure do remember the day.

Q. Well, what happened?

A. Well, we were sitting and talking over a trestle table at the i4i offices and discussing customer problems and how to resolve them. And we were trying to come up with, you know, something that resolved these issues. And we finally did, you know, kind of in that discussion come to the realization, wait, the problem we've got is we keep thinking these two are the same thing. And if they weren't, a lot of those problems would go away.

Q. When you say these two, what are you referring to?

A. So it's really the structure of the document, the metacodes, that information that used to be implied, and the content of the document.

Q. And how did you feel when you had that realization?

A. Well, it was actually pretty exciting, because I think we thought that that was a pretty new idea.

Q. Did you tell anybody about it?

A. Yes, sir. I have a perhaps bad habit of going home and telling my wife all about the boring and geeky things I do at work, so I definitely went home and excitedly told her about that conversation.

Q. Now, when you and Mr. Vulpe first had this idea, were you sure that it would work, that it would do what you wanted it to?

A. Oh, no, sir.

Q. So what did you do?

A. Well, you know, what you need to do is try to build something. And when you're in software, building something consists of sitting down at a keyboard and starting to type. So I sort of ran over to my keyboard and started typing.

Q. Where did you do that work?

A. That was at the i4i offices in Toronto.

Q. And what was that like? What was your office like?
A. So I think a generous assessment would be basic.
Q. And what do you mean by that?
A. Well, so you're looking at a few used roll chairs, some trestle tables with computers setting on them, and the cafeteria was the 2-for-1 pizza place on the street outside.
Q. Were you eventually able to create a working prototype?
A. Yes, sir, we were.
Q. And about how long did that take?
A. Well, I don't know the exact timeline, but it was certainly in the months kind of range. We spent, you know, several weeks just playing with ideas and trying to get something that worked.
Q. How did you feel when you finally got it to work?
A. Well, it was exciting. I think it's something that most people looking at it would go: That's all it does?
But to us, it really proved that we had done what we set out to do, that it was now feasible to take these things apart, put them back together, and deal

with them separately.

Q. Now, what sort of computer system did you develop your prototypes to run on?

A. The computers were what's called IBM PCs, not because they're made by IBM but because they have a particular type of processor in them. And they were mostly running DOS and Microsoft Windows.

Q. And why did you decide to develop your prototype on that particular sort of system?

A. Well, there was another piece of software that was available at that time called the SP Parser from someone named James Clark, and it let us read all those SGML characters very easily.

So it was very convenient to use that platform. Also, I was just a lot more familiar with the development tools on that platform than I was anywhere else.

Q. Did you ever change or modify your prototype to run on the Macintosh platform?

A. No, sir. That SP product that I just mentioned wasn't available on the Macintosh at the time, and I wasn't very familiar with the particular development tools I was using on the PC.

Q. And what computer system did the SEMI product run on?

A. It was running on the Macintosh.
Q. And did you ever go back and modify or retrofit the SEMI system to include your invention?
A. No, sir. I never did that work.
Q. Now, we saw your patent.
MR. BURGESS: PX1, pull it back up here.
Q. (By Mr. Burgess) When did you and Mr. Vulpe decide to file the application that ultimately issued as the '449 patent?
A. I don't remember the exact date. It would be late '93 or very early in '94. It was very -- very soon after we had the initial discussions around the idea.
Q. Had you or Mr. Vulpe ever filed for a patent before?
A. No, sir.
Q. Have you filed for one since?
A. No, sir.
Q. Why did you pick this idea as one to file a patent application?
A. Well, I think that I always felt the bar for a patent was pretty high, and it had to be something innovative, something new. And I think this was the idea that we came up with that I felt sort of meet (sic) and exceeded that bar.
Q. Did you think the problem that you had solved

was an important one?
A. Yes, sir, I did.
Q. And did you have a role in actually preparing the application?
A. Yes, sir.
I was asked to write a draft that would provide information to the -- to the patent agent in helping them actually write the patent application.
Q. And did you eventually sign off on the application?
A. Yes, sir, I did.
Q. Look here at Plaintiffs' Exhibit 4, Page 38, which is also in your handbook.
Can you tell me what's highlighted here?
A. Well, first of all, the somewhat illegible bit on the left is my signature.
Q. And I see there's a date there. What's that date?
A. That's the 24th of May, 1994, a pretty memorable day for me.
Q. Why do you say it was a memorable day?
A. Well, my wife's birthday is the 25th, and we were supposed to be leaving on a camping trip to celebrate. And I was in a patent office discussing last-minute details with the lawyer instead of packing

the car and putting everything ready to go, so I was getting a bunch of increasingly annoyed phone calls all day.

Q. Now, looking back at PX1, the cover of the patent, we see that it issued in July of 1998.

By this time, were you still consulting for i4i?

A. No, sir, I was not.

Q. Nonetheless, did you learn when the patent issued?

A. Yes, sir, very quickly.

Q. And how did you find out?

A. Mr. Vulpe called me pretty much as soon as he found out.

Q. And what happened there?

A. Well, it was kind of whoa moment.

Q. And how did you feel when the U.S. Patent Office issued you that patent?

A. I felt great, and it's something that, you know, I didn't think I would probably ever achieve that. I think the kind of recognition that, well, maybe every geeky software developer would like to get.

Q. Are you pleased with what you and Mr. Vulpe accomplished and what the Patent Office recognized with the issuance of your '449 patent?

A. Yes, sir, very pleased.
Q. Thank you.
Before you step down, there is one more thing. Do you recall having your deposition taken in this case?
A. Yes, sir, I do.
Q. Where you sat down with some lawyers and a lawyer from Microsoft asked you some questions?
A. Yes, sir.
Q. Do you recall the Microsoft attorney asking you about the money that i4i owed you?
A. Yes.
Q. Now, when you came back to do some consulting for i4i, after you had initially left, was i4i always able to pay you on time?
A. No, sir.
Q. Why not?
A. My understanding was they didn't have the money.
Q. And did Mr. Vulpe ever tell you whether or not he intended to pay you?
A. Yes, sir. We discussed it and he promised me that he would make every effort to repay that debt.
Q. And has that happened?
A. Yes, sir.

Q. And when did that happen?
A. That would be late 2007.
Q. Do you have any hard feelings toward Mr. Vulpe for the late payment?
A. No, sir. I've been in small business, really, for quite a long time, and I do understand that these things happen.
Q. The fact that i4i paid you six months ago have any impact whatsoever on what you testified to today?
A. No, sir.
Q. And if you hadn't been paid, would you have said the same thing you have testified to here today?
A. Yes, sir, it is, in fact.
Q. Thank you, Mr. Owens.
MR. BURGESS: I'll pass the witness, Your Honor.
THE COURT: Thank you.
Cross-examination.
MR. POWERS: Your Honor, I have a binder full of exhibits I may want to use with Mr. Owens. May I approach and give a copy to counsel?
THE COURT: Yes, you may.
MR. POWERS: Would Your Honor like a set?
THE COURT: Yes, uh-huh.

MR. POWERS: Would your attorney like one as well?

LAW CLERK: Yes, sir.

THE COURT: Yes.

MR. POWERS: May I proceed, Your Honor?

THE COURT: Yes, you may.

CROSS-EXAMINATION

BY MR. POWERS:

Q. Good afternoon, Mr. Owens.

A. Good afternoon.

Q. I'd like to begin where you left off. i4i's counsel asked you about some money that Mr. Vulpe paid you in late 2007.

Do you recall that?

A. Yes, sir.

Q. That was money that had been owed for several years, correct?

A. Yes, sir.

Q. At least five or six?

A. I would have to check the records, but that doesn't sound wrong.

Q. And it was about $73,000, a little more?

A. That sounds about right, yes, sir.

Q. And he paid you that $73,000 just around Christmastime of 2007?

A. Again, I'd have to check the date to be certain, but it sounds about right, yes, sir.
Q. And your deposition was just a few weeks later in January of 2008, right?
A. Again, I'd want to check the date, but that sounds about right, yes, sir.
Q. And you raised that debt with Mr. Vulpe when he called you last year to help in this lawsuit, didn't you?
A. I'm sorry, sir. Could you repeat that?
Q. In 2007, Mr. Vulpe called you and asked for your help in the lawsuit, didn't he?
A. Yes, sir.
Q. And when he did so, you raised this debt and asked him to repay it, didn't you?
A. I guess I'd like to say that I don't recall I explicitly asked him to repay it. He had raised the debt issue.
Q. He raised the debt.
And Mr. Vulpe, who hadn't paid you for several years, came up with the money three weeks before your deposition; is that fair?
A. Again, I'd want to see the dates.
Q. But it was around Christmastime and your deposition was around mid-January?

A. Yes.
Q. All right. Based on your use of Word, your study and your knowledge of your patent, when you were involved in all of these projects, you couldn't say that Word infringed your patent, could you?
A. No, sir.
Q. Let's talk about the SEMI project that you testified about.
Now, one of the things that you said was important about your invention was that you could separate that SGML document into different parts and store them separately, right?
A. I don't believe I used the word store, sir.
Q. So it's not important that you store the separate parts? Well, let's take it one piece at a time.
You testified that one of your -- parts of your invention was that you could take that SGML document that was all combined and separate it into different pieces, right?
A. There is a separate metacode map and map content, yes, sir.
Q. Okay. And you heard counsel for i4i in opening statement say that those two things, the metacode map and the content, are stored in different

places.

Is that -- would you agree that's part of your invention?

A. I don't think I heard that. I'm sorry, sir.

Q. You didn't hear that?

A. No, sir.

Q. Do you agree that storing the metacodes and the content in different places is an important part of your invention?

A. No, sir. I'm not sure that's in the patent.

Q. Have you ever been shown His Honor's claim construction ruling in this case, Judge Davis'?

A. I don't believe so, sir.

Q. Now, one aspect -- let's put aside the storage aspect, since you weren't shown that. The SEMI system did allow separation of an SGML document into separate parts, didn't it?

A. So I feel like we're still talking about separating SMGL into the content, and no, it did not allow that, sir.

Q. Okay. I need to show you your deposition.

Do you have it in front of you, or do you need it?

A. Is it in this binder, sir?

Q. It's not in that one; it's in a separate one.

I just didn't know if you had it separately.

A. I don't have it, no.

MR. POWERS: Your Honor, there are two volumes. One is January 15th, 2008, and one volume is October 17, 2008. I might as well hand both of them now. If I may approach?

THE COURT: All right.

MR. POWERS: Here's the January 15th. I'll have you the October 17th one in a moment, Your Honor.

So we can proceed, may I hand the witness one, and then we can get going?

THE COURT: Yes, you may.

MR. POWERS: Thank you.

I'll give you our copy.

Q. (By Mr. Powers) Mr. Owens, could you look in the October 17 one that I just handed you at Page 95?

A. Yes, sir.

MR. POWERS: And, Your Honor, I'll read, for the record, from Page 95, Line 24 through Page 96, Line 6, and then Page 99, Line 17 to 21.

And, Your Honor, may I explain to the jury what a deposition is, or do you wish to do that, or do they understand the process?

THE COURT: All right. Yes. I'll just

explain to the jury that a deposition is questions and answers taken under oath at a time prior to trial, and they're typed up into a formal written document that shows the questions and the answers.

MR. POWERS: Thank you, Your Honor. On Page 95, Line 24:

QUESTION: And they both allowed you to decompose an SGML document into entities and store those entities in -- as separate pieces or separate entries in the database, right?

ANSWER: SEMI --

A. I'm sorry, sir. There's a slight misreading. The word is entities, not entries.

Q. (By Mr. Powers) I thought I said entities, but I'll say it again.

QUESTION: And they both allowed you to decompose an SGML document into entities and store those entities as separate pieces or separate entities in the database, right?

ANSWER: SEMI did, and for Nelson, I just don't remember. It never kind of went as far, and I wasn't as involved in it, so I'm not sure about Nelson.

Q. (By Mr. Powers) That was your testimony in that part of the deposition, Mr. Owens?

A. Yes, sir.

MR. POWERS: And then, Your Honor, I'll read from Page 99 of the same transcript, Line 17.

QUESTION: So in the SEMI database, you would import an SGML document, and you would take that document, and you would decompose it into different pieces or entities, correct?

ANSWER: Yes, I believe so.

Q. (By Mr. Powers) That was your testimony there as well, Mr. Owens?

A. Yes, sir.

Q. Okay. The SEMI system was sold by i4i to SEMI in 1992, wasn't it?

A. I'm afraid I'm not aware of the sale date, sir.

Q. You just don't remember?

A. I wasn't on the sales side; I was on the technical side.

Q. You were part of the group that installed it in February of '93, though, weren't you?

A. Yes, sir.

Q. All right. Now, February of '93, when you installed it, that's more than one year before the date you filed your patent application in 1994, right?

A. That date would be more so, yes, sir.

Q. And you understood that the system that you

installed at SEMI, the S-to-the-4th system, practiced your patent, didn't you?

A. No, sir, definitely not.

MR. POWERS: Your Honor, I'd like to play -- I think we have it available to show as a video clip from Mr. Owens' deposition on January 15th at Page 206, Line 23 through 207, Line 17.

THE COURT: All right. Let him have an opportunity to locate it.

(Video playing.)

QUESTION: Regardless of whether --

MR. POWERS: No. Wait. Wait. Wait.

(Video stopped.)

A. I'm sorry. What were the page numbers?

Q. (By Mr. Powers) 206, Line 23 --

A. Oh, yes, sir.

Q. -- through 207, Line 17.

A. Okay.

THE COURT: All right.

(Video playing.)

QUESTION: Regardless of whether -- if they're occurring or not, which of i4i's products do you understand embody your invention that you know about?

ANSWER: That I know about? So the only system that I had direct interaction with was S4.

QUESTION: Now, is that S4 the core engine, or was that S4/Text that we're talking about? I've seen several different descriptors.

ANSWER: Right. Yeah.

So, again, the -- yeah, the -- at the time that I was doing the original work, it was just S4. There wasn't any other nomenclature around.

QUESTION: And what versions of S4 did you work on?

ANSWER: Oh, I don't remember.

QUESTION: Okay.

ANSWER: .01 certainly.

QUESTION: From -- from the first, from the earliest?

ANSWER: Yeah.

(End of video clip.)

Q. (By Mr. Powers) Now, that exact testimony, you were shown that testimony at your later deposition in October, and you said it was true, didn't you?

A. I was shown it, shown the videotape, sir?

Q. No. No. Read the exact portion.

A. Yes, sir, I believe so, although I would want to see it in the deposition.

Q. But you don't disagree with the testimony that you just gave; it's accurate?

A. It's -- what I said is correct, but it did not refer to the SEMI system.
Q. Okay. Even though you said it was the very first system you worked on and the only system you worked on?
A. I don't believe that's an accurate characterization, sir.
Q. You worked on the SEMI system, didn't you?
A. Yes, I did, sir.
Q. And that was the first system you worked on for i4i?
A. The SEMI system was the first system I worked on for i4i, yes, sir.
Q. All right. Now, could you turn in your binder to Exhibit 2395?
MR. POWERS: Your Honor, this is in evidence now.
So let's put it up on the screen, if you could, Chris.
A. I'm sorry. That was 2395, sir?
Q. (By Mr. Powers) Yes, it is.
Let me know when you have it.
A. I believe I do, sir, yes.
Q. This was -- this is a document dated in August of '94. Do you see that?

A. Yes, sir, I see that date on the document.
Q. And you -- and you were still at i4i in August of '94?
A. Yes, sir, I was.
Q. Now, this document is a submission by i4i to the Canadian government seeking funding for work, correct?
A. I don't know, sir.
Q. Do you know that IRAP is the Industrial Research Assistance Program in Canada?
A. I believe I've heard that term, yes, sir.
Q. Now, if you look -- and you are aware that i4i was seeking money for further development costs, weren't you?
A. I'm not sure I was, sir.
Q. Well, let me see if I can help remind you. The document -- if you go to Page 10 of the document --
MR. POWERS: Chris, if you could pull up the section that says Project Team, please.
Q. (By Mr. Powers) It's actually 9 on the bottom. Let me -- there's two types of numbers, so let me help you. The original document, it says Page 10, but there's a .009 in the bottom right-hand corner, it's .009.
A. I see it.

MR. POWERS: And if you could bring up the Project Team, please, Chris, so we can all see it?

Q. (By Mr. Powers) Do you see that you are shown as project leader for this project?

A. Yes, sir.

Q. Do you recall being proposed as project leader for a project for the Canadian government?

A. No, sir.

Q. You still remember it?

A. No, sir.

Q. You're not denying it happened, I take it.

A. No, sir.

Q. Now, you -- you've heard Mr. Vulpe characterize the S4 technology that was sold to SEMI as being patented, haven't you?

A. No, sir, I have not.

Q. Let's see if this reminds you.

MR. POWERS: Chris, could you pull, from the bottom of Page 2 of the document, which is on Page 1.001, starting at project technical background and pull that up so we can all read it a little better.

Q. (By Mr. Powers) And just to make sure that we're all on the same page, I'll read it. It says, quote, Infrastructures has applied for a U.S. patent. Then it shows a patent serial number. That's the --

MR. POWERS: Stop there.
Q. (By Mr. Powers) That's the same serial number that's on your '449 patent, isn't it?
A. I'd have to compare them. I believe --
Q. Could you do that, please. You've got -- it's Exhibit 1 in the book in front of you that your counsel gave you, the one you used on direct examination.
A. Yes, sir. The numbers are the same.
Q. Same patent. In fact, i4i only has one U.S. patent, right?
A. I don't know anymore, sir.
Q. All right. You only know of one?
A. I only know of one, yes, sir.
Q. All right. So the quote is, Infrastructures -- and that -- when it says Infrastructures, that's referring to i4i, isn't it?
A. I don't know, sir. I assume so.
Q. That was the name of the company?
A. Yes, sir.
Q. All right. Infrastructures has applied for a U.S. patent -- then it's the same serial number -- to protect specific technology that it has developed. The initial implementation is embedded into Infrastructures S-to-the-4th product, which is a

vertical market document development and management application targeted to the semiconductor and publishing industries, close quote.

Do you see that?

A. Yes, I do.

Q. Now, the product that was sold to SEMI was called S-to-the-4th, wasn't it?

A. Yes, sir.

Q. And SEMI was a semiconductor organization, wasn't it?

A. It was a consortium in the semiconductor industry, yes, sir.

Q. All right. Could you turn then in the same book to Exhibit 2396.

A. Yes, sir.

Q. Do you recognize on the back page --

MR. POWERS: Chris, if you could pull up the signature of Mr. Vulpe.

Q. (By Mr. Powers) Do you recognize that as his signature?

A. It's a little squooshier than I've seen it.

Q. But it looks similar to his normal signature; that's fair, isn't it?

A. I'm not sure I would want to comment.

Q. All right.

MR. POWERS: And if you would go up a little bit to Item 4, please, Chris, on the same page where it says subcontractor, No. 1, identification.

Q. (By Mr. Powers) It lists you as a subcontractor in this and other documents submitted to the Canadian government, this IRAP document. Do you see that?

A. Yes, sir, I do.

Q. Do you still not recall whether you were being proposed as a subcontractor for this proposal to the Canadian government?

A. No, sir. This would be at my usual technical level.

Q. But you didn't even know that you were being proposed for that?

A. I certainly don't remember it, sir.

Q. Okay. You're not denying it one way or the other; you're just saying you just don't remember; is that fair?

A. Correct. Yes.

Q. All right.

MR. POWERS: So let's go to the first page, please, of the document, and bring up just the first client information box, the big box at the top, so that we can all read it.

Q. (By Mr. Powers) The name of the client is Infrastructures for Information. That was the name for i4i, wasn't it, Mr. Owens?
A. Yes, sir.
Q. And then it says, Business Products, and it says S-to-the-4th, right?
A. It certainly could be read that way, yes, sir.
Q. The 4 is shown as a superscript, isn't it?
A. About halfway in between.
Q. Don't you think it looks like a superscript?
A. Yes, sir.
Q. All right. And that S-to-the-4th product is exactly what was called -- what the SEMI product that was sold to SEMI was called, S-to-the-4th, right?
A. Yes, sir.
Q. Okay.
MR. POWERS: Now, if you'd turn to the next page of the document, please. And, Chris, could you bring up the project title?
Q. (By Mr. Powers) The project title is called Metacodes Project. Do you recall discussion inside i4i about your invention being called the metacode patent or Metacode Project? Do you recall that?

A. Sir, I don't remember specific instances, no, sir.
Q. But that sounds like nomenclature that was being used at the time, doesn't it?
A. The nomenclature appears in the patent, so I would expect so.
Q. All right.
MR. POWERS: And, Chris, if you could bring up the third box on that page, the one that says Summary of Progress to Date.
Q. (By Mr. Powers) You see the first bullet says, U.S. Patent Application filed, and there's only one that was filed, right?
A. Again, I'm not sure now.
Q. As of this time, which is 1994 -- let's see what the date is -- 1994, there was only one that was filed as of that time, correct?
A. Yes, sir, that's my understanding.
Q. And the next bullet says, Single metacode model implemented in i4i flagship product, S-to-the-4th, vertical product market.
Do you see that?
A. I do see that, yes, sir.
Q. And that S-to-the-4th product is, again, what the SEMI product was called.

A. The SEMI product was called S-to-the-4th, yes, sir.
Q. All right. Now, the SEMI product had a metacode map, didn't it?
A. No, sir.
Q. Could you turn to Exhibit 2065 in your book.
MR. POWERS: This is also in evidence, Your Honor.
And, Chris, would you bring up, please, the bottom portion? It says Infrastructures' S-to-the-4th.
A. 2065; is that correct?
Q. (By Mr. Powers) 2065.
And the bottom part of that page refers again to the S-to-the-4th SEMI product, doesn't it, right there where it says Infrastructures' S-to-the-4th?
A. Sorry. Do you mind if I look through the document?
Q. I don't mind if you do that, but I'd like you to answer the question first. The page we're looking at right now says, Infrastructures' S-to-the-4th, right?
A. It does say that, but I'm not comfortable -- you asked if it referred to the SEMI system. I'm not comfortable with answering that unless looking through the document.

Q. Fair enough. Let's -- we will look through it, but the S-to-the-4th is what the SEMI system was called, right?

A. Yes. S-to-the-4th is what the SEMI system was called.

Q. Okay. And if you'll turn to Page 48 of the document -- and by 48, I mean the .048 at the bottom right-hand page.

MR. POWERS: And, Chris, can you bring up the top half of the page, please.

Can everybody read that? It's a little hard to read still. If you can't read it, we'll try to get it a little larger.

Anybody not read it from the jury? Okay.

Q. (By Mr. Powers) Do you see at the very top of that page, Mr. Owens, it says, Metacode Services?

A. Yes, sir, I see that.

Q. And then it says, S4 duplicate map?

A. Yes, sir, I see it.

Q. And there's a discussion of how the S4 duplicate map works under the metacode services title?

A. Yes, sir.

Q. Does that help you remember that there was a metacode map in the S-to-the-4th product?

A. It does help me remember that this is

definitely not the SEMI system it was talking about, yes.

Q. Even though it says S-to-the-4th?

A. And I'm sorry, sir. Even though what?

Q. Even though the document on the front page says S-to-the-4th?

A. Yes, sir. The document is, obviously, erroneous in that.

Q. Okay. Now, could you turn to Exhibit 2202 in your book?

A. Yes, sir.

Q. This is a document that you used in connection with the SEMI product, right? There's no debate that this is the SEMI product?

A. Do you mind if I just take a quick look?

Q. Of course not.

A. Thank you.

Yes, sir.

Q. So 2202 is the SEMI product that was sold more than a year before your patent application was filed?

A. 22 was a document about that, yes, sir.

Q. All right. It's a manual that you gave to SEMI about that product, right?

A. It's certainly a manual we authored, yes,

sir.

Q. All right. And it shows how it works, right?

A. Not really, no, sir.

Q. Well, this was a manual you gave to SEMI to help them understand the system, right?

A. Yes, sir. It just helped to clarify how a user would use it as opposed to how it would work.

Q. Okay. Now, in this -- in the SEMI system, there was a screen called an editor screen, right?

A. I don't believe that's the full name.

Q. Could you look at Page 104 of Exhibit 2202, and that's -- it's 104 either way, the real number or the .104 number.

A. That's convenient.

MR. POWERS: Chris, could we get that a little bigger? Is that possible? Well, that's a little bigger.

Q. (By Mr. Powers) The title of this page, Mr. Owens, is the editor screen.

Do you see that?

A. Yes, sir.

Q. This is a screen that would actually be on the SEMI system that a user could see, right?

A. Yes, sir.

Q. And the Section B, that screen would show the

SGML tags that were available to that user to work from, correct? That's what Item B says on the right?

A. Yes, sir.

Q. And there's also a portion of the SEMI system called the document outline view, right?

A. Yes, sir.

Q. And those tags, those SGML tags you described, those are metacodes, aren't they?

A. Well, not in the terminology of the patent, no, sir.

Q. I thought you said on direct examination the tags were metacodes.

A. No, sir. I think I said that in the patent, we used the terminology metacode to refer to what are called tags in SGML.

Q. Okay. So an SGML tag is a metacode within the meaning of your patent, fair?

A. Yes, sir.

Q. All right. Could you turn to Page 110 of Exhibit 2202. This is discussing the document outline view?

A. Yes, sir.

Q. The document outline view was another type of screen that a user of the SEMI system could use and see, right?

A. Yes, sir.
Q. And through that screen and the editing screen, you could manipulate the SGML tags or metacodes, couldn't you?
A. I'm afraid I don't remember, sir.
Q. Don't remember one way or the other?
A. Well, you said both, and I'm not sure that it could do it in both.
Q. It could do it in the editing screen for sure.
A. Yes, sir.
Q. So you could move -- you could manipulate or edit the metacodes in the editing screen in the SEMI system.
A. Well, SGML tags, to be clear.
Q. Okay. And those are metacodes within the meaning of your patent.
A. Well, if -- if we were talking about the patent application, it would be, but in SEMI, of course, they were just tags.
Q. Okay. And you could manipulate those tags and edit them in a way that the user wanted to.
A. You could certainly insert tags, I believe.
Q. And you could move them, too, couldn't you?
A. I don't know if that's true or not, sir.

Q. Would you turn to Page 115 of Exhibit 2202.
A. Yes, sir.
Q. That gives you an example of moving tags to the right or left, correct, as one manipulation of a tag you could do in the SEMI system?
A. No, sir.
Q. There's a heading that says moving tag right and tag left.
A. Yes, sir.
Q. So that doesn't mean moving tag left or tag right?
A. That's correct. It does not mean that, sir, no.
Q. The text reads, quote, moving tag right or tag left moves your cursor one tag position either forwards or backwards. This means that your cursor will move from within a tag to outside a tag or from outside a tag to the next tag.
Is that how it worked?
A. Yes, sir. So it did move the cursor position, not the tag. They're quite different.
Q. And then you would use the editing screen to manipulate the tag, right?
A. Again, that's where I'm not sure. I did say we could insert, and that's -- that's my memory.

Q. All right. But the purpose of the editing screen is to edit, isn't it?
A. That's a reasonable assumption, sir, yes.
Q. Okay. Now, there are meta -- there are tags, SGML tags, in that document outline view, physical ones, in the SEMI system.
A. In the SEMI system? Yes, sir.
Q. And those tags were stored in the data structure, weren't they?
A. I'm going to say no.
Q. They weren't stored at all?
A. Well --
Q. How could you look at them if they weren't stored?
A. They were in a list, so there was a GUI list that held them.
Q. And the locations of those tags were stored somewhere; otherwise, they'd be gone, right?
A. I'm sorry, sir. I'm not clear on the question.
Q. I thought you said -- just said that the tags aren't stored anywhere; is that right?
A. No, sir. I think we were talking about whether there was a data structure or not.
Q. Okay. They were stored. The tags, the SGML

tags, that are visible in the document outline view are stored, correct?

A. Well -- so to be clear, it's really the -- just the name of the tag.

Q. And that's stored?

A. Is it stored? It's in -- it would have to be in the list.

Q. And the address of it had to be stored, right? Otherwise, it's useless.

A. Well, I'm going to say no.

Q. So your testimony is that in the document outline view or in the SEMI system, the addresses of the SGML tags were never stored?

A. Yes, sir.

Q. So they're gone; can never be used.

A. Well, no, sir, because they were still in the document.

Q. And they weren't stored anywhere?

A. Well, they were in the document. They were mixed in with the content, as they are in any SGML system.

Q. And the SEMI -- and your testimony that we showed you from your deposition said that the SEMI system allowed separating the SGML document into separate entities and storing them separately.

That was what your testimony that we just read said, wasn't it?

A. An entity is an SGML document with mixed tags and content. I think that's the confusion, sir.

Q. Okay. So let's talk about RTF for just a minute. You're familiar with rich text format?

A. I'm familiar with the name, sir.

Q. You refer to it in your patent as another language that's been used, right?

A. As I said, a formatting code, yes, sir.

Q. So that has codes that affect what a document looks like as well.

A. I believe so, yes, sir.

Q. And you're familiar that the rich text format or RTF was created by Microsoft.

A. Actually, I didn't know that, no, sir.

Q. Could you look at your own patent, Exhibit 1.

MR. POWERS: And, Chris, can you bring up Column 2, Line 32?

Q. (By Mr. Powers) Mr. Owens, let me know when you have that. It's also on your screen.

In your own patent, you say, quote, some of these formats are being used as standards in the industry. Microsoft has developed a de facto standard for document interchange called the rich text format or

RTF.

Do you see that?

A. Yes, sir. Apparently, I did know that at some time.

Q. Okay. Now, in RTF or Microsoft's rich text format, a paragraph code can be a metacode as you use it in your patent, right?

A. That's an interesting question. I'm going to say the answer is no.

Q. Well, let's take it backwards. There's a paragraph tag in SGML, which you consider to be a metacode within the meaning of your patent, right?

A. Yes, sir.

Q. And rich text format or RTF has the ability to declare something a paragraph, but you say that's not a metacode?

A. Yes, sir, I believe so.

Q. So one paragraph is a metacode, but one is not?

A. In entirely different standards, used for different purposes, yes, sir.

Q. All right. Can we -- I'd like you to look --

MR. POWERS: And, Your Honor, I'll read from his deposition. It's the January 15 deposition. And it's at Page 142, Line 5 through 12.

Q. (By Mr. Powers) Mr. Owens, you said in your deposition, also under oath, quote:

QUESTION: So would an RTF code that designated a body of text as a paragraph, would that be a metacode?

ANSWER: So it would depend on what you had to do to interpret that information. So if -- you know, if it required a skilled human who knew RTF to work that out, maybe not. If it -- yeah, it could be.

Q. (By Mr. Powers) That was your testimony, right?

A. Sorry. I've lost the line number. Could you give that to me again?

Q. 142, Lines 5 to 12.

A. Yes, sir.

Q. And the title code in RTF is also a metacode within the meaning of your patent, too, isn't it?

A. I'm sorry, sir. Are you still reading from the deposition?

Q. It's a question for now.

A. Again, so I would say no.

Q. So title in SGML is a metacode, but title in RTF is not, as your -- according to your testimony.

A. Yes, sir.

Q. Let's go to your deposition then, please, at

Page 142, Lines 13 to 20.

MR. POWERS: And, Your Honor, I'll read that into the record.

QUESTION: It could be.

Now, wouldn't an RTF code that designated a body of text as being a title, would that be a metacode?

ANSWER: So, typically, they're -- well, I guess I don't know that. Yeah, if it clearly defined the semantics of the content it was embedded within, then, yes, it would be a metacode.

Q. (By Mr. Powers) That was your testimony, correct?

A. With the proviso that that's semantics, yes, sir.

Q. One final question, Mr. Owens. You testified on direct that you created the invention on a PC, and the SEMI system was a MAC or Apple-based, correct?

A. Yes, sir.

Q. And I take it what you're trying to convey in that is that the invention is related to a PC and wouldn't have been done on an Apple system. Is that -- was that the point of your testimony?

A. I'm sorry. Could you clarify the term related to?

Q. Well, I was trying to figure out what point you were trying to make.

Were you trying to make the point that the invention was done on a PC, and therefore, because the SEMI system was done on an Apple, they're different?

A. Yes, sir.

Q. In fact, in your patent, you specifically say that the best system that you know of is an Apple system, isn't it?

A. I don't believe I used the word best, sir.

Q. Well, could you look in your patent at Column 5.

MR. POWERS: And, Chris, could you please bring up, oh, Lines 3 through the rest of that paragraph.

Q. (By Mr. Powers) And you say there, Mr. Owens, in your own patent specification, a specific example of such an acceptable computer system comprises a Quadra 800 personal computer, a standard Apple 14-inch monitor, a standard Apple keyboard, working RAM, et cetera.

That's what you say in your patent, right?

A. Yes, sir.

Q. Now, the Quadra, that's an Apple computer, isn't it? Why is that?

A. Yes, sir, one that's easier to identify.

Q. All right. So when you try to set out in your patent the type of computer that would work acceptably with the invention, you cited the Apple system, not the PC system, right?

A. Yes, sir, because Apples are much easier to identify than PCs.

Q. And in fact, you cited the exact Apple system in your patent for use in the invention that you specified to SEMI on the SEMI system, didn't you?

A. I don't know that, sir. It could be.

Q. Would you look at Exhibit 2202 again.

A. Yes, sir.

MR. POWERS: Chris, could you bring up Page 12.

Q. (By Mr. Powers) This is part of your SEMI document that you described earlier that describes the SEMI system, right?

A. Yes, sir.

Q. And on Page 12, at the third bullet, you say, Machine, at least a Macintosh 2c1. We recommend that you use a Quadra.

A. Yes, sir, that's what it says.

Q. So the SEMI system that you recommended is exactly the same system that you recommended in the patent.

A. I believe there are some differences, and I don't think we recommended it in the patent.

Q. It's the only one you listed in both places; is that fair?

A. I'd have to look through the patent. It's the only one I did see in what we were just reading, yes, sir.

MR. POWERS: No further questions, Your Honor.

THE COURT: All right. Redirect?

MR. BURGESS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BURGESS:

Q. Mr. Owens, you just had a discussion regarding entities and SGML.

A. Yes, sir.

Q. Can you explain to the jury what an entity is.

A. Yes, sir.

As we saw in that document, originally, we had several SGML tags. We had the title; we had overview; we had chapter. And entity is just a way to take an entire section of that document, all the characters that you see on the screen.

So right from that very first angle bracket

in front of the word overview right to the last angle bracket after the end overview tag, take that whole piece out and just put it somewhere else, so it still is mixed.

SGML tags and content has been practiced forever in SGML.

Q. Is an entity an example of mapped content?

A. No, sir, in no way.

Q. Is it a metacode map?

A. No, sir.

Q. Does it have anything to do with your invention?

A. No, sir. It is, in fact, explicitly stated in the SGML standard as a way to do a decomposition of documents.

Q. Now, you just had a discussion about the reference to Apple computer in your patent. Why did you list Apple computers as an example of the system that could implement your invention?

A. Yeah. So I referred earlier to the office being quite basic, and one of the things that was basic in the office were the computers that we used. So all the computers were white label. There were no names on them. It wasn't like we bought from, you know, some -- IBM or Compaq or somebody.

So if you wanted to identify a computer by name, it was quite hard to find anything on the computers. The only computer in the office that we had that had a real name on it was the Apple Quadra. So that was the name I chose.

Q. Is there any limit -- limitation in your patent to the sort of system that your invention could be used on?

A. No, sir. It's not limited in any way.

Q. I'll just ask you what I asked you in your direct examination again. Did you ever implement your invention in the SEMI system?

A. No, sir, we did not.

MR. BURGESS: Thank you, Your Honor. No further questions.

THE COURT: Any recross?

MR. POWERS: No, Your Honor.

THE COURT: All right.

All right, Ladies and Gentlemen of the Jury, I think we're going to call it a day. You've been very attentive, put in a hard day today. We'll start back at 9:00 o'clock in the morning continuing with the testimony.

Please remember my instructions. Don't discuss this case among yourselves or with anyone else.

Get a good night's sleep, and we'll see you back here at 9:00 o'clock in the morning. You are excused to the jury room.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Please be seated.

All right. Mr. Cawley, was there some testimony?

MR. CAWLEY: Yes, Your Honor. This witness had some testimony relevant to inequitable conduct.

THE COURT: All right. Who will be asking the questions?

MR. CAWLEY: Mr. White is going to handle the inequitable conduct.

THE COURT: All right.

MR. POWERS: Your Honor, may I ask a question before we proceed?

We had testimony from this witness on his 30(b)(6) deposition on this exact topic, which is why didn't he disclose the sale of SEMI.

And we want to play that, Your Honor. We don't have to do that now. We can do it whenever Your Honor wishes to see it. It would make some sense for Your Honor to see it now for two reasons.

One is it's our burden of proof, and so it make sense for you to see his testimony from our perspective already taken on the 30(b)(6).

And second, it would be relevant to consider in the context of hearing what other testimony he's now going to give under oath on the other side. So if the high road is Your Honor wishes to hear that at another time --

THE COURT: Well, let me ask about how long you anticipate for your direct examination.

MR. WHITE: It shouldn't be longer, Your Honor, than 30 minutes. I'm hoping to certainly keep it shorter than that.

One of the reasons that we requested the Court to allow us the opportunity to take Mr. Owens at this time is that he is from out of the country, and he's actually not even a party -- working for the parties here.

And so we're trying to get him off on the issues that he has to address, and so we were hoping to do this today while he's here so he can go home to his family.

The playing of the deposition, the 30(b)(6), since this is a bench matter, would seem that it could come in at any time the Court deemed

appropriate.

So we would encourage -- or effectively request that we have the opportunity to finish his testimony on all the issues that he's going to testify about today.

THE COURT: You may proceed and try to make it as brief as possible, and Mr. Powers can cross-examine the witness.

STEPHEN OWENS, PLAINTIFFS' WITNESS, SWORN

DIRECT EXAMINATION

BY MR. WHITE:

Q. Mr. Owens, I have just a few questions concerning the issue of the charge of inequitable conduct.

Would you direct -- turn your attention, Mr. Owens, to Plaintiffs' Exhibit 79 in the binder that we've provided to you and ask you if this is a copy of that S4 user's guide that you've been testifying regarding.

A. Yes, sir. This looks like the SEMI user's code.

Q. Did you write the source code for that product?

A. Some parts of it, yes, sir.

Q. What parts of that product did you write?

A. I was responsible for the editor in particular, as well as some of the pieces of the membership system and the document management.
Q. Does that source code exist today?
A. No, sir, it does not.
Q. Do you know why it doesn't exist?
A. It's just gotten too old. I believe it was discarded.
Q. If you had that source code here today, what would you be able to tell this Court about the design of the editor portion of that product?
A. Oh, I could then tell you exactly --
MR. POWERS: Objection, best evidence.
THE COURT: Excuse me?
MR. POWERS: Object, best evidence. I mean, he either has a recollection, which he can testify about, or -- but he shouldn't be speculating about what he could testify about if he had source code that he doesn't have.
THE COURT: All right. Restate the question.
Q. (By Mr. White) Would the source code reveal to you how it was internally designed and operated?
A. Yes, sir. Then I could tell exactly how it was done.

Q. Thank you.

Despite the fact that that source code does not exist today, can you testify with any degree of certainty today whether the SEMI-S4 source code practiced the invention of the '449 patent?

A. Yes, sir, I can.

Q. And what is your opinion on that?

A. It could not have, because we had not yet come up with the idea.

Q. When did you and Mr. Vulpe conceive of the invention of the '449 patent?

A. It was late in 1993, sir.

THE COURT: Late 19 what?

THE WITNESS: '93, Your Honor.

THE COURT: '93.

Q. (By Mr. White) And when was the source code that you wrote for the SEMI S-to-the-4th product completed and installed and running?

A. Sir, I'm not sure of the exact date, but it would have been early in '93 or late in '92.

Q. So it was at least a year earlier than the date you conceived of the idea which became the subject matter of the '449 patent?

A. Several months --

MR. POWERS: Object to leading, Your

Honor.

THE WITNESS: I'm sorry.

MR. POWERS: Object to leading.

THE COURT: Overruled.

A. Yes, several months, sir.

Q. (By Mr. White) What did you and Mr. Vulpe do, after you had conceived of this invention, about trying to obtain a patent on that invention?

A. We talked to my brother, Richard Owens, to see if he had any idea how to go about getting a patent.

Q. And why would you speak to your brother?

A. He was, at the time, I believe anyway, corporate counsel for Infrastructures for Information.

Q. Does your brother practice intellectual property law?

A. Yes, sir.

Q. Did your conversations with your brother lead to a meeting with a patent agent in connection with the preparation of the patent application?

A. Yes, sir. He introduced us to Dr. Brian Barlow, who was a patent agent working for the same firm as my brother at the time.

Q. Would you turn in your binder to Plaintiffs' Exhibit 600.

MR. WHITE: And, Your Honor, at this

time, Microsoft has objected to the use of this Plaintiff -- of this Exhibit 600 in connection with Mr. Owens' testimony on the basis that Mr. Owens really has no personal knowledge regarding that document.

This is -- Plaintiffs' Exhibit 600 is, in fact, the handwritten notes of a notebook by Mr. Vulpe. He will identify and authenticate the document when he takes the stand.

We're using it today just for the purpose of trying to refresh the recollection of the witness and not being offered into evidence at this time, so --

THE COURT: All right. You may proceed.

MR. POWERS: Your Honor, if I may, if it's being used to refresh recollection, there is not yet a precise question showing a absence of recollection where it can be refreshed.

Because if we don't do that, he's just going to read it to him and say, is that right, and that's not refreshing recollection. I think it's an inappropriate use of the document.

THE COURT: All right. You may proceed.

MR. WHITE: Thank you.

Q. (By Mr. White) Would you turn to Plaintiffs' Exhibit 600, Mr. Owens.

A. Yes, sir.

Q. Can -- do you -- do you recognize the handwriting that is on this document?
A. May I just examine it for a second?
Q. Yes, please.
A. Yes. I believe that to be Mr. Vulpe's scrawl.
Q. Are you familiar with the practice that Mr. Vulpe had of taking notes at meetings in a spiral-bound notebook?
A. Yes, sir. Actually, everyone at the company followed the same practice.
Q. Did you also have such a practice?
A. Yes, sir, I did.
MR. WHITE: Could I have shown on the screen a portion of this exhibit that has the production numbers 6911?
Q. (By Mr. White) Mr. Owens, it's -- it's the -- the production number ends, and the last four digits is 6911.
A. Yes, sir, I have it.
Q. Do you see that?
A. Yes, sir.
Q. Now, this entry here, would you take a look -- and it says -- I believe it says Brian Barlow, and the date was February 18th, 1994.

A. Yes, sir.
Q. Does that refresh your recollection of a meeting that occurred with Brian Barlow on that date?
A. Yes, sir. I know I did attend a meeting with Dr. Barlow at Smith Lyons, which was my brother's -- my brother's law firm.
Q. Is this the date of the meeting you had with Mr. Barlow?
A. It certainly is in the right -- right timeframe, yes, sir.
Q. Now, if you'll notice Mr. Vulpe's notations, does that refresh your recollection as to the subject matter of the discussions you had with Dr. Barlow at that meeting?
A. Yes, sir. Dr. Barlow was laying out the information that we had to provide to him to use as input in his drafting of the patent. So we were laying out what we needed to include in that -- in that set of information.
Q. Was he requesting that you and Mr. Vulpe prepare the draft specification for this patent?
A. Yes, sir. He did ask that we do that.
Q. Why -- why -- how did -- why did he make that request of you; do you recall?
A. Well, my understanding was software patents

were fairly new at that time, and Dr. Barlow, I believe, was more in the chemical area, and so he didn't have the familiarity with the subject matter, he felt, to do that preparation.

Q. Now, if I could have -- if you would turn your attention to two pages further into the document, to the page that has the production number 6193 on it, there is -- there are some notations there by Mr. Vulpe regarding the prior art and setting up a straw man.

Do you see that?

A. Yes, sir.

Q. Do you recall that discussion with Dr. -- Dr. Barlow?

A. Yes, sir. The term straw man is particularly evocative. He suggested that we set up the prior art as a straw man to demonstrate how we were different.

Q. What did he tell you you were supposed to do with respect to the disclosure of what you knew about prior art?

A. So we had the instruction that it was our obligation to disclose everything we knew really that was helpful in understanding the field of the invention and might be helpful to an Examiner.

Q. And did you prepare such a draft specification?

A. Yes, sir, I did.
Q. If you would turn to Plaintiffs' Exhibit 594 in the binder.
A. Yes, sir.
Q. Do you recognize this document? Take a look at the entire document, if you need to, Mr. Owens.
A. Yes, sir. I believe that's the draft that I wrote of the information for the patent application.
Q. Now, you testified earlier today that after you and Mr. Vulpe conceived of this invention, that there was a period of time where you were in the process of testing or validating the idea in the computer program.
Do you recall that?
A. Yes, sir.
Q. Now, you indicated that you believed you conceived of the invention in -- near the end of '93, and the date of this document, the date in which you delivered the first draft specification, I believe, is in April of '94?
A. Yes, sir. April 13th, 1994 is the date on this document.
Q. What were you doing in that interim between the conception and the date that this specification was delivered as far as the validation of the invention was

concerned?

A. Sir, there were two things. One of the instructions that we had is that we had to disclose how to practice the invention in the patent. And when we came up with the original idea, we didn't know how to practice the invention.

So we had to ensure that we had enough of a -- at least a prototype implementation to prove that we had, in fact, practiced it and could document that for the Patent Office. So that was certainly one of the activities we were undertaking.

Q. Now, your draft specification includes a discussion of the prior art, correct?

A. Yes, sir.

Q. What was the source of the information that you provided in the write-up, the first draft specification, regarding the prior art?

A. That was based on my experience in the SGML industry, sir.

Q. Did you have any discussions from Mr. Vulpe as to what should go into this section?

A. I'm afraid I don't remember it, specific discussions. It seems very likely.

Q. Okay. Have you ever heard of the duty of candor in connection with the filing and prosecution of

a United States patent application?
A. Yes, sir, I have.
Q. And when did you first hear that concept?
A. Well, that concept was explained to us really in that -- in that initial meeting with Dr. Barlow.
Q. Well, what did you understand the duty of candor to mean?
A. My understanding was that it was related to our obligation to disclose any prior art that we were aware of that would be helpful in leading the Examiner in evaluating and understanding the application.
Q. Well, how were you and Mr. Vulpe planning on complying with your duty of candor after that meeting with Dr. Barlow?
A. Well, we were drafting the information that Dr. Barlow had asked for, and my plan was to include in that document anything I was aware of that I thought would be relevant.
Q. Well, do you believe that you and Mr. Vulpe complied with your duty of candor in that regard?
A. Yes, sir, very much so.
Q. And how is that?
A. Well, the application that I made -- or the draft that I did had an explicit reference to the SGML standard; it had reference to the types of applications

that I was aware of that practiced the prior art.

Q. Let me stop you right there, Mr. Owens, and ask that --

MR. WHITE: If you would pull up a slide on Plaintiffs' Exhibit 1.

Q. (By Mr. White) If you could direct your attention to the patent, PX1.

A. Yes, sir.

Q. Placed up on the screen, an excerpt out of the patent. In Column 2, we'll start with -- it looks like Line 41. You made reference to the SGML standard?

A. Yes, sir.

Q. Is this where you provided, in the written description, the reference to the standard?

A. Yes, sir. I give the name of the -- of the SGML language, as well as the ISO standard we referred to.

Q. Keeping your finger on that location in the patent, would you turn over quickly to Plaintiffs' Exhibit 131.

A. Yes, sir.

Q. Do you recognize that document?

A. Yes, sir. That's a copy of the ISO standard for SGML.

Q. Were you familiar with that standard at the

time you wrote this draft specification?
A. Yes, sir. We had to use the standard frequently as a reference document anytime we were producing SGML material.
Q. The understanding that you have regarding SGML and the features of that standard come from your having studied the standard itself?
A. Yes, sir, among other things, including --
Q. Do you have any other reference materials you relied on to understand how SGML and the standard worked?
A. Yes, sir. There was a book called the SGML handbook written by the inventor of SMGL, Dr. Charles Goldfarb.
Q. Could you look at Exhibit 291 and tell us, is that exhibit the handbook you just referred to?
A. Yes, sir. That's a very familiar looking cover, too.
Q. What was the purpose of this handbook?
A. So the standard, of course, is a technical document. It's intended to define exactly how SGML is laid out. And as such, it can be a little hard to understand how to practice the standard.
The handbook tried to make the standard a little more approachable by providing more in the way of

a tutorial and example-based approach to understanding and using SGML.

Q. Why did you feel it necessary to actually cite the standard by the ISO number in connection with your description of your invention?

A. Well, I thought that, first of all, the prior art that we were relying on was definitely SGML and that in disclosing the standard number, we were giving a whole and very large field of reference to the Examiner to help understand where the invention fit in.

Q. Okay. If you would turn back to the patent in Plaintiffs' Exhibit 1.

A. Yes, sir.

Q. You were saying that in addition to disclosing the ISO standard for the SGML standard, that you had described in some -- in a general sense, SGML editors; is that right?

A. Yes, sir.

Q. Would you -- would you take a look then over at Column 3, Lines 13 to 34 of the patent.

A. Yes, sir.

Q. What did -- what did -- what were you trying to disclose here in this part of the background section of the invention?

A. Well, I think it might be helpful if I just

read that section as an introduction.

Q. Please.

A. It says the current practice outlined here above -- here and above suffers from the following disadvantages:

While inventing structural information in the content stream is accepted standard practice, it is inefficient and inflexible.

In a digital age for manual production of documents, the intermingling of the markup codes with the content is still the best way of communicating structure. For electronic storage and manipulation, it suffers from a number of shortcomings.

That section is really referring to my experience with actually having to deal with this problem in trying to create the editor for the SEMI application where we did have, you know, markup and content mixed in the same stream, and it causes a bunch of the problems that I refer to there.

Q. Did the SEMI editor that you wrote, the text editor that you wrote, did it work with documents that combine structure and content as a single unit?

A. Yes, sir, it did. It pertains to SGML documents that had the structure and content in them.

Q. What do you mean by a single unit?

A. So the -- the tags actually appeared -- and by tags, I mean the angle brackets -- the names of the tags appeared within the text stream of the content, just at it did in the SGML system.

Q. So all of the editing that would occur that would cause changes to be made to the content or changes to be made to the SGML tags, that would be handled by processing the document combining structure and content as a single unit?

MR. POWERS: Object to leading, Your Honor.

THE COURT: Overruled.

A. Yes, sir, that's my memory.

Q. (By Mr. White) And that's what you were trying to describe here in Column 3?

A. Yes, sir.

Q. Well, how many prior art SGML text editors that processed documents combining structure and content where you understood what the internal data structures and the internal functions were prior to the time you wrote this Column 3 disclosure?

A. I was only familiar with one, just the SEMI editor, sir.

Q. Turn to Exhibit 4, if you would, Plaintiffs' Exhibit 4, Mr. Owens.

This is a copy out of the prosecution history of your oath and declaration, and I believe you've already identified for the record that you signed the oath and declaration on the day before your wife's birthday.

A. Yes, sir, that's right.

Q. That was just prior to the time that you and Mr. Vulpe filed your application?

A. Yes, sir, it was.

Q. Now, you indicated that your brother, Richard Owens, is an intellectual property lawyer in Canada; is that right?

A. Yes, sir. He was at Smith Lyons at the time.

Q. And he was actually working with you and Mr. Vulpe in connection with getting this application on file?

A. Yes, sir, in his capacity as counsel for Infrastructures for Information.

Q. Did you have a meeting with your brother, Mr. Owens, Richard Owens, and Mr. Vulpe prior to the time that you actually signed this declaration?

A. Yes, sir. At the Smith Lyons' offices just before we signed, my brother took us both apart to discuss some of the aspects of that signature.

Q. Did he discuss with you your duty of

disclosure and duty of candor regarding this application?

A. Yes, sir. He gave me the little brother riot act about what I was signing.

Q. Well now, this was the second time that someone had advised you that you had a duty of candor with regard -- regarding the prosecution of your application; is that right?

A. Yes, sir. And the first time would have been in my initial meeting with Dr. Barlow.

Q. What did you say to your brother when he gave you the admonition regarding your duty of candor prior to the time you actually signed this oath?

A. I said that I did understand what I was signing, sir.

Q. Did you feel like you were complying with your duty in connection with the filing of this application?

A. Yes, sir, very much so.

Q. Now, on the next -- the next page of your oath and declaration, at the top of that document, there is a copy of 37 CFR 1.56 A, which deals with the duty of disclosure.

Did -- did you read that before you signed your oath and declaration?

A. Yes, sir. I have a bit of a personality quirk in actually tending to read legal documents before signing them, and I did read that.

Q. Well, what did you think about that as you read it as far as your understanding of the duty of disclosure?

A. Well, two things really. First of all, it agreed with what I felt I understood. And it also, I think, drove home the seriousness of what I was undertaking and signing.

Q. Did you have an understanding, when you signed your oath and declaration, that the duty of candor to the United States Patent & Trademark Office was a continuing duty that required you to disclose to the Patent Office any relevant information you might become aware of during the pendency of the application?

A. Yes, sir, I did.

Q. Well, let me ask you, then, Mr. Owens, did you, during the time that the patent application was pending, learn of any details of any prior art that you considered to be relevant to your invention?

A. No, sir, I did not.

Q. Mr. Owens, did you ever have any intent to deceive the Patent & Trademark Office by withholding information about any prior art known to you prior to

the time you filed this application?

A. No, sir, definitely not.

Q. Did you ever have any intent to deceive the United States Patent & Trademark Office by withholding information about the SEMI-to-the-4th product that you were aware of prior to the time you filed this application for the '449 patent?

A. No, sir, definitely not.

Q. When you signed this oath and declaration of your patent application, Mr. Owens, did you believe that you had complied with your duty of disclosure as you understood it?

A. Yes, sir, I did.

MR. WHITE: I pass the witness.

THE COURT: All right.

Cross-examination.

Oh, Mr. White, Ms. Ferguson asked me do you intend to offer these exhibits that you've made reference to during your direct?

MR. WHITE: Yes. Yes, Your Honor.

THE COURT: That would be what exhibits?

MR. WHITE: Oh, where's my list?

MR. PARKER: May we provide you with that list in a few minutes, Judge?

THE COURT: No, I would like to go on and

get it now.

MR. WHITE: It would be Plaintiffs' Exhibits 1, 4, 79, 594, 291, and 131.

THE COURT: All right. Any objection?

MR. WHITE: PX600 is not being offered at this time.

THE COURT: All right.

MR. POWERS: None to those exhibits, Your Honor.

THE COURT: All right. Be admitted. Now, the PX, that's going to refer -- your exhibit numbers with an X, are those the ones -- is that Plaintiffs' exhibit?

MR. WHITE: Plaintiffs' exhibit.

THE COURT: And are these numbers all mixed in with your jury exhibits as well?

MR. WHITE: I believe so, Your Honor.

THE COURT: Same exhibits. But are you offering these exhibits just for the inequitable conduct or for the jury as well?

MR. WHITE: Some of these will be referred to in Mr. Vulpe's direct testimony, and I'm not sure, but I thought you did --

MR. CAWLEY: 1 and 4 have already been admitted in connection with the jury testimony.

THE COURT: Which one is that?

MR. CAWLEY: 1 and 4.

THE COURT: Okay. Why don't we do this so that we can keep these straight: If you've already offered them with regard to the jury, you don't need to reoffer them here, although you can if you want to. And then when each side provides Ms. Ferguson with a list tomorrow morning, give us two lists; one for the jury and one for the Court, okay?

MR. WHITE: Yes, sir.

THE COURT: Thank you.

All right. Let's proceed.

MR. POWERS: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. POWERS:

Q. Mr. Owens, you provided testimony about what you are contending as your conception date with Mr. Vulpe.

Do you recall that?

A. Yes, sir.

Q. Now, you don't have any contemporaneous notebooks that document that conception date, do you?

A. I did have them, but I'm afraid they were lost, sir.

Q. So they're gone in the sands of time?

A. Apparently so, yes, sir.
Q. And the same with Mr. Vulpe's apparently?
A. I don't know, sir.
Q. The one that was shown to you was really 1994.
Have you seen any notebooks from Mr. Vulpe from the conception period?
A. I have not seen anything, no, sir.
Q. The source code from the SEMI project and that product that's gone, too, and that could have told us what that product had exactly, correct?
A. Yes, sir.
Q. You testified that you were instructed about your duty of candor in detail at least twice, right?
A. Yes, sir.
Q. So you knew you had to disclose anything that was relevant to your invention that had been done before, right?
A. Yes, sir.
Q. And do you recall that you were deposed on the question -- and speaking for i4i on the question of why didn't you disclose the SEMI sale.
Do you recall that?
A. Yes, sir.
Q. And do you recall that your answer was that

you tried to disclose the SEMI sale, didn't you? That was your answer, right?

A. No, sir.

Q. Not your answer.

Let's look at Page 202 of the October 17 transcript from Line 12 to 203, Line 6.

MR. POWERS: I will read it into the record, Your Honor.

Actually, we'll start -- I think it will be easier -- it will be clearer if we start all the way back at 201, Line 25.

A. I'm sorry. Which deposition, please, sir?

Q. The October 17th deposition, the one where you were testifying for the company.

A. Yes, sir.

THE COURT: Now, what was -- what was the page and line? 201/25.

MR. POWERS: 201/25 is where we're starting, and this is his 30(b)(6) deposition. And I'm going to include the topic in the question so that the record is clear.

QUESTION: All right. You understand that you're designated to testify as to Topic No. 19, which reads: All reasons that Michel Vulpe, Stephen Owens, or agents and those substantively involved in the

prosecution of the '449 patent did not disclose products systems or technology that Michel Vulpe, Martin Hensel, and/or Hensel Corp. offered for sale and/or sold to designed, developed, tested, and/or installed for SEMI in 1992 and 1993 to the Patent Office?

ANSWER: Yes.

QUESTION: So why don't you tell me all the reasons that you didn't disclose the SEMI system to the Patent Office.

ANSWER: Well, I think -- you know, I think the best answer is we did try to. The -- you know, the patent talks about the sort of preamble of the patent. I'd have to look at it. Probably should, actually. Let's go back, because I have a copy here.

And there's an off-the record discussion.

Answer continues: Yeah, so I'm going to talk about -- you know, this whole background to the invention section talks about dealing with standardized generalized markup languages -- standard generalized markup languages, the problems of dealing with embodied markup and mixed markup.

And I think that -- you know, that did inform the Patent Office of the problems. The -- what's the word? The art is practiced in the SEMI system, so...

That was your answer given in the deposition, right?

A. I'm actually sorry. I want to agree with you. I just didn't catch the page number. I thought it was 201, but I didn't see it there.

Q. 201, Line 25.

A. 201, Line 25.

Q. Down through 203, Line 6.

A. I think I must have a different copy.

Q. It's October.

A. I'm looking at January's.

Q. I will wait till you find it.

A. Now I'm there. Sorry about that.

Q. All right. So your answer there was you did try to disclose the SEMI system, right?

A. I think the answer is that we did try to disclose the problems of the SEMI system or the way the SEMI system practiced the prior art, which was SGML.

Q. But you didn't disclose the sale of the SEMI system at all, did you?

A. No, sir.

Q. And you didn't disclose the fact that there were repeated references that we just went through in front of the jury to the SEMI S-to-the-4th system being patented by the only patent i4i had. You didn't

disclose that patent either, did you?
A. I haven't seen any of those references previously, sir.
Q. You also didn't disclose the fact that there was a document outline view and editor in the SEMI system that would allow you to view the SGML tags, did you?
A. No, sir.
Q. You didn't disclose the fact any of the substantive information from the manual about how the SEMI system worked?
A. The SEMI system was an SGML system, so I believe we did, sir.
Q. My question was, you didn't disclose any information from the manual so that the Patent Examiner could decide for himself whether the SEMI system worked just in the way that you're characterizing SGML prior art systems or whether it was an improvement on those. You didn't disclose the manual, did you?
A. No, sir.
Q. And you didn't disclose the fact that there was a specific on sale and installation more than a year before the patent application was filed?
A. A specific what? I'm sorry, sir.
Q. Sale and installation more than a year before

the patent application was filed?
A. Do you mean on the SEMI?
Q. On SEMI precisely.
A. No, sir.
Q. You did not disclose that, correct?
A. Yes, sir.
MR. POWERS: With that, Your Honor, no further questions.
THE COURT: All right. Any redirect?
MR. WHITE: No, Your Honor.
THE COURT: Thank you. You may step down.
Do you wish to have this witness finally excused, or do you think you may have --
MR. WHITE: I believe so, Your Honor.
MR. CAWLEY: Yes, Your Honor.
THE COURT: All right. Any objections, Mr. Powers?
MR. POWERS: No objections.
THE COURT: All right. You are finally excused.
THE WITNESS: Thank you, Your Honor.
THE COURT: Thank you for your attendance.
All right. Anything else before we

adjourn for the day?

All right. Y'all have a good evening. We'll see you back in the morning at 9:00.

COURT SECURITY OFFICER: All rise.

(Court adjourned.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_____ _____
SUSAN SIMMONS, CSR Date
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

/s/_____ _____
JUDITH WERLINGER, CSR Date
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date 12/31/10